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

OFFICE OF
PESTICIDE PROGRAMS

February 14, 2017

MEMORANDUM

TO: Regional Pesticide Supervisors

FROM: Lance Wormell, Chief
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Office of Pesticide Programs

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Office of Enforcement and Compliance Assurance

SUBJECT: JOINT OPP/OECA FY2018-2021 FIFRA COOPERATIVE AGREEMENT GUIDANCE AND FIFRA WORK PLAN AND REPORT TEMPLATE

Attached is the final version of the joint OPP/OECA 2018-2021 FIFRA Cooperative Agreement Guidance as well as the updated FIFRA Work Plan-Report Template. Please share the guidance and template with the states, tribes and territories in your region. All applicants should use the updated FIFRA Guidance and Template in negotiating cooperative agreements for FY2018.

The 2018-2021 FIFRA Cooperative Agreement Guidance is made up of the main guidance document (21 pages), and 13 appendices, which provide additional information. While the document is large, the main portion of the guidance, and particularly the matrices, provide most of the key information needed to understand EPA's expectations for National Pesticide Program Cooperative Agreements. Key changes between the FY2015-2017 FIFRA Cooperative Agreement Guidance and the FY2018-2021 FIFRA Cooperative Agreement Guidance include:

1. Updated worker protection standard requirements as the result of changes to the rule;
2. Updated applicator certification requirements as a result of changes to the rule;
3. Updated the required list to move the container/containment program area to be part of the basic pesticide program requirements;
4. Updated the required list to move soil fumigants program area to a broad pick-list program area that includes all fumigants;
5. Added product integrity as a required program area;
6. Added border compliance as a required program area;
7. Added emerging public health pesticide issues to the pick-list;

8. Added the Compliance Monitoring Strategy as an appendix;
9. Updated Appendix 13: Reporting and Coordination of High Level Pesticide Incidents;
10. Added a section to the FIFRA Report and Work Plan Template for "retired/inactivated" program areas, and added an explanation of this section to the main body of the guidance (retired/inactive pick-list program areas include imports, supplemental distributors, contract manufacturers and the national data system); and
11. Changed the guidance from a three-year to a four-year document to better align with the NPM guidance development process.

This cover letter, final guidance and appendices, and the FIFRA template and instruction manual will be uploaded to the EPA compliance website: https://www.epa.gov/compliance/state-oversight-resources-and-guidance-documents. All files will be Adobe PDF except for the template which is in Excel.

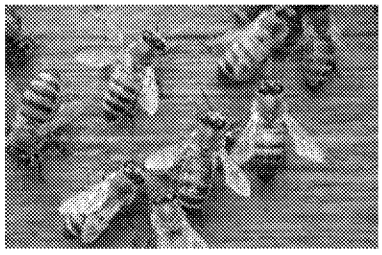
Thank you for your thoughtful comments during the review cycle. If you have any questions, please contact either Lance Wormell at 703-603-0523 for pesticide program questions, or Liz Vizard at 202-564-5940 for pesticide compliance monitoring and enforcement related questions.

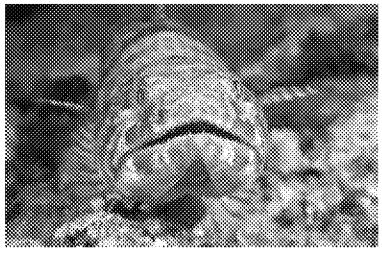
Thank you.

Attachments

2018-2021 FIFRA Cooperative Agreement Guidance

February 14, 2017





U.S. Environmental Protection Agency

Office of Pesticide Programs
Office of Enforcement and Compliance Assurance

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I. INTRODUCTION

The U.S. Environmental Protection Agency's (EPA or Agency) Office of Pesticide Programs (OPP) and Office of Enforcement and Compliance Assurance (OECA) are issuing the national FY 2018-2021 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Cooperative Agreement Guidance (Guidance), to be used by the EPA regional offices in negotiating and overseeing cooperative agreements with states, territories and Indian tribes ("grantees"), as authorized under Sections 23(a)(1) and 23(a)(2) of FIFRA.[1]

The purpose of this Guidance is to identify pesticide program and compliance and enforcement program areas that must be addressed in state and tribal cooperative agreements and to provide information on work plan generation, reporting and other requirements.

OPP provides funds to support "program activities" for pesticide program development and implementation, including: education, outreach, training, technical assistance and evaluation activities. OECA provides funds to support "compliance and enforcement activities," which include compliance assistance, compliance monitoring, case development and enforcement. This joint Guidance is intended to help coordinate the pesticide program and compliance and enforcement activities in support of the goals of the National Pesticide Program. Thus, the two sets of activities are interconnected, but may be handled either independently or under a single cooperative agreement.

National Pesticide Program Goals

The goal of the National Pesticide Program, consistent with FIFRA, is to ensure that pesticides are made available for use, and are properly sold, distributed, and used, in a way that is protective of human health and the environment. The National Pesticide Program protects people and ecosystems that may be exposed to pesticides, through its pesticide product registration and registration review program, outreach, technical assistance, and compliance and enforcement programs. Achieving these protective outcomes requires collaborative efforts by citizens, pesticide users, states, tribes, territories, regions, OPP, OECA, and other partners. As co-regulators, states, tribes and territories serve an essential role as the EPA's "eyes and ears" on the ground to identify pesticide concerns; to provide EPA feedback from the field to determine if intended risk mitigation measures are effective; to monitor compliance with the regulated community; and to take appropriate enforcement action when necessary.

The National Pesticide Program areas reflected in this Guidance are developed by OPP, OECA and the EPA regional offices with extensive input from states and tribes, and are consistent with EPA's Strategic Plan and Agency priorities. To that end, the program areas listed in this Guidance reflect both national and regional

[1] Section 23(a)(1) of FIFRA, as amended, authorizes the EPA to enter into cooperative agreements with states, territories and Indian tribes ("grantees") 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. The regulations governing cooperative agreements are in Title 40 CFR Part 30 for institutions of higher education and Part 35 for states and tribes.

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pesticide concerns. However, the degree to which a particular pesticide issue, program area or activity is of concern in a particular state or tribe may vary. This Guidance attempts to recognize that reality and balance support for National Pesticide Program priorities, goals and performance measures, with providing grantees flexibility to focus on those national program areas which present the greatest concerns locally. Through this approach, we believe all national priorities will be addressed, although not by each grantee or with the same level of effort, and local pesticide resources will be directed to where they are most needed.

Guidance Framework

The framework of the national Guidance is structured to ensure usability, and clearly communicate expectations to grantees. The charts in Sections II and III concisely summarize the OPP and OECA program areas and activities that each grantee is required to support, and a pick-list of national program priorities that the grantee must choose from to support. For many grantees, these charts will provide most of the information needed to understand EPA's expectations for National Pesticide Program Cooperative Agreements. However, more details and context for each program area can be found in Appendix 1, Supplemental Information for Program Areas.

Programs areas listed in Sections II and III are designated as either required or pick-list program areas. The grantee and the EPA regional office will negotiate the acceptable performance level and resources necessary for all activities included in the work plan.

- **Section II: Required Program Areas** – These areas are of particular importance during the cooperative agreement guidance period. While the level of effort invested in each required program area is negotiable between the grantee and EPA region, some level of effort is mandatory and must be reflected in grantee work plans.
- **Section III: Grantee Program Area Pick-List** – Grantees must select a subset of the listed program areas from the "pick list", based on regional and local considerations. All program areas on the pick-list are national priorities; however, EPA recognizes that the relative importance of each of these program areas may vary for each grantee based on their pesticide risk concerns. Grantees must include activities in their work plans to support one program area on the pick-list funded by OPP, and one program area funded by OECA. The selected program areas can either be aligned (i.e., activities for both OPP and OECA from the same program area) or from different program areas.

Most program areas and their associated activities are described broadly to allow grantees and regions the flexibility to negotiate specific work plan activities that reflect the grantee's needs, concerns and resources. However, in a few cases such as Worker Safety and Applicator Certification, the required activities are very specific and must be included in the work plan. For these program areas, it is felt that completion of the specific activities by the grantee is needed to meet the national goals of the program.

The EPA acknowledges that certain activities and functions of a pesticide program are not predictable. For example, throughout a given period, a situation may arise whereby the cooperative agreement recipient must act to address a crisis or EPA may be required to obtain certain information or institute certain activities in the field. To the extent possible, this Guidance allows regions and grantees latitude within the agreements to account for such unforeseen circumstances. And if necessary, work plans can be amended and re-negotiated.

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Grantees may negotiate a Performance Partnership Grant (PPG) in lieu of pesticide program and enforcement cooperative agreements. Under the PPG system, regions and grantees should continue to use this Guidance to ensure that program areas are addressed consistent with this Guidance. More information on PPGs can be found on page 13 of this Guidance.

Multi-Year Agreements

Regions are encouraged to pursue multi-year cooperative agreements and work plans for the period of this Guidance where both the region and grantee agree that such an approach would reduce administrative burden. However, such agreements and work plans are subject to availability of funds and changing priorities or current events. While multi-year work plans span the life of the agreement, work plans will still need to be renegotiated annually to make sure any new issues are addressed.

Applicability of Guidance to Tribes

EPA recognizes that available resources, program capacity and needs for many tribes are not comparable to those of most state pesticide programs. Therefore, all required program areas or activities listed in this Guidance may not be appropriate for all tribes and do not necessarily need to be included in tribal cooperative agreements. Regions may negotiate the tribal cooperative agreements and work plans on a case-by-case basis to focus on program and enforcement areas and levels of attainment relevant to the capacity and needs of the tribal pesticide program. A January 2011 document, *Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements*, provides more detail on funding tribal cooperative agreements. This can be viewed at: http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P100AVNU.txt In addition, the FIFRA Project Officer Manual has a chapter on managing tribal grants.

Work Plan and Reporting Framework

EPA has developed a FIFRA Cooperative Agreement Work Plan-Report Template (FIFRA template) for work plans and reports for cooperative agreements awarded under this Guidance. The FIFRA template, which is an Excel spreadsheet, was developed by EPA with extensive input and a considerable amount of support from states with the goal of significantly reducing the administrative burden associated with work plan development and accomplishment reporting for both the grantee and EPA regional personnel. The FIFRA template also promotes clarity in work plan expectations and end-of-year results, makes work plans and reports more consistent throughout the country, and facilitates compilation and review of national year-end data.

As of FY 2017, all FIFRA Cooperative Agreements must be reported via the FIFRA template. A link to the FIFRA template, instructions for its use, and a brief description can be found in Appendix 2, FIFRA Cooperative Agreement Work Plan-Report Template Description and Links. Reporting requirements are summarized in Section VIII, Table 1, Summary of Reports and Annual Due Dates.

EPA Oversight Responsibilities

EPA's collaboration efforts with states and tribes began in the 1970's when FIFRA was amended to allow EPA to enter into cooperative agreements with states and tribes (FIFRA Section 23) and was further

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broadened to allow states to obtain primary enforcement responsibility for pesticide use violations (FIFRA Section 26).

The Regional EPA Offices are substantially involved in the implementation of state and tribal FIFRA programs. Regional project officers will negotiate work plans, monitor the progress of work plan commitments, and provide fiduciary oversight. Regional offices, OPP and OECA communicate regularly on all aspects of FIFRA implementation. EPA also ensures that states can maintain primacy. Appendix 3, State Primacy under FIFRA and EPA Oversight Questions and Answers, provides more information concerning "primacy" and EPA's role in overseeing a state's program where primacy has been granted.

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II. REQUIRED PROGRAM AREAS

REQUIRED program areas represent areas of work that are important at a national level during this Guidance period. While all listed activities below are required, the level of effort invested in each required program area and activity is negotiable between the grantee and EPA region and must be reflected in grantee work plans. Note each program area is followed by a unique number that links to the FIFRA Template. In some cases, the numbers are not sequential due to activities that are no longer active. See section IV for more information. Each of these program areas support the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Goal	Work Expectations Specific Activities Negotiated between Grantee and Region	
	Activities Supported by OPP Funding	**Activities Supported by OECA Funding**
Required Program Area: Basic Pesticide Program (01)		
Maintain a basic level of pesticide program implementation, compliance assistance, and enforcement to ensure a viable pesticide regulatory and enforcement program, achieve environmental results, and maximize success with the Agency's performance measures.	**Required Activities:** 01.00.01 Complete administrative/management, fiduciary and reporting requirements associated with this cooperative agreement. 01.00.02 Build or maintain staff and management expertise on pesticide program issues and enforcement (e.g., attend training opportunities through PREP, PIRT, in-service training, etc., or other appropriate activities). 01.00.03 Respond to pesticide inquiries, concerns, tips, and complaints from the public.	
The basic program includes previously required program areas such as container containment and soil fumigation; these areas are now part of the overall pesticide program.	**Required Activities:** 01.01.01 Provide outreach, communication, and training as appropriate as a result of new emerging issues, rules, regulations, and registration and registration review decisions. 01.01.02 Report information on all known or suspected pesticide incidents involving pollinators to OPP (beekill@epa.gov) with a copy to the regional project officer.	**Required Activities:** 01.02.01 Project inspection numbers, and report inspection and enforcement accomplishments using the 5700 forms, and the performance measures form contained in the FIFRA template. 01.02.02 Maintain adequate pesticide laws, rules, and associated implementation procedures. 01.02.03 Provide outreach and compliance assistance. 01.02.04 Maintain and use a priority setting plan for inspections & investigations, addressing grantee and EPA- identified priorities (see Appendices 4 and 5). 01.02.06 Develop/maintain a searchable inspection/investigation and case tracking system and track all inspections/investigations and cases. 01.02.07 Ensure a minimum of one state employee obtains and maintains an EPA inspector's credential. Where state authority is inappropriate or inadequate, or at EPA's request, conduct FIFRA inspections with EPA credentials, according to EPA procedures and guidance documents. 01.02.08 Refer all inspections conducted with federal credentials to the region.

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		01.02.09 Refer cases to the region for enforcement consideration according to a mutually identified referral priority scheme. 01.02.10 Maintain and follow an enforcement response policy to develop and issue enforcement actions. 01.02.11 Follow up on significant or grantee and region agreed upon pesticide incidents referred by EPA as required by FIFRA Sections 26 and 27. 01.02.12 Conduct inspections as negotiated and consistent with the FIFRA Inspection Manual. 01.02.13 Maintain and follow a Quality Management Plan for the overall pesticide enforcement program. 01.02.14 Maintain and follow Quality Assurance Project Plan(s) for pesticide sample collection and analysis. 01.02.15 Maintain access to adequate laboratory support capacity. 01.02.16 Assist EPA in enforcing regulatory actions and monitoring Section 18 Emergency Exemptions, Section 24(c) Special Local Needs, and Section 5 Experimental Use Permits.
Required Program Area: Pesticide Worker Safety: Worker Protection Standard (02)		
Prevent or reduce occupational pesticide exposures, incidents and illnesses from pesticides, especially ones that pose high risks or potentially high exposures to workers.	**Required Activities:** 02.01.01 Implement the November 2, 2015, rule revisions to the Part 170 Worker Protection Standard (WPS) rule, and carry out WPS program implementation activities in accordance with this and other applicable EPA guidance. 02. 01.02 Conduct WPS-related outreach, education and technical assistance on the revised rule's requirements to the regulated and impacted community. 02.01.03 Support WPS worker & handler training: a) Assist in the development (as needed) and distribution of EPA approved WPS training materials for workers and handlers to ensure that employers and trainers can comply with new WPS training requirements; b) Facilitate adoption of WPS Train-the-Trainer (TTT) programs to improve the quality and effectiveness of WPS trainers/training; c) Update existing state/tribal-level WPS training or educational materials and/or use updated materials as applicable/appropriate. 02.01.04 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.	**Required Activities:** 02.02.01 Monitor compliance with the WPS requirements associated with use. In targeting and prioritization within this activity, focus on high risk pesticides, large numbers of workers, high exposure scenarios, or repeat offenders. 02.02.03 Monitor compliance for WPS label language by comparing the product label against the Section 3 accepted label. 02.02.04 Update as needed: WPS inspection manuals, checklists, SOPs, case development procedures, and ERPs consistent with the revised WPS.

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	02.01.05 Attend and participate in any WPS training efforts initiated by HQ or EPA Regions, and /or other WPS trainings taking place in a state or Indian country.	
Required Program Area: Pesticide Worker Safety: Pesticide Applicator Certification (03)		
Prevent or reduce pesticide exposures and incidents to humans and the environment by increasing the competence and expertise of applicators/handlers of restricted use pesticides.	**Required Activities:** 03.01.01 Implement the January 4, 2017, rule revisions to the Part 171 Certification of Pesticide Applicators rule, and carry out the pesticide applicator certification program implementation activities in accordance with this and other applicable EPA guidance. 03.01.02 Meet state and tribal certification plan requirements for certification plan maintenance and annual reporting using the Certification Plan and Reporting Database (CPARD) 03.01.03 Monitor applicator training programs to ensure quality and that training programs comply with revised rule requirements and applicable standards/guidance. 03.01.04 Develop and submit to EPA revised certification plans that meet the requirements of the revised certification rule. This includes making any necessary regulatory and legislative changes and establishing requisite policies or procedures to comply with the revised rule requirements and all applicable Part 171 program guidance regarding development, submission, approval and maintenance of certification plans. 03.01.05 Provide outreach, education and technical assistance on the revised Part 171 rule requirements to the regulated and impacted community. 03.01.06 Update existing state/tribal-level applicator training and certification materials as applicable/appropriate. 03.01.07 Attend and participate in any program-related training efforts initiated by HQ or EPA Regions, and /or other trainings taking place in the state or Indian country.	**Required Activities:** 03.02.01 Monitor compliance with the pesticide applicator certification requirements. In targeting and prioritization within this activity, focus on sale/distribution of restricted use pesticides (RUPs) to applicators; in particular, structural fumigants and other fumigation sector(s) of concern.
Required Program Area: Pesticides in Water (06)		
Ensure that pesticides do not adversely affect the nation's water resources.	**Required Activities:** 06.01.01 For pesticides scheduled for registration review, submit existing water quality monitoring data not already provided to EPA, housed in the USGS National Water Information System (NWIS), entered into EPA's STORET Data Warehouse, or otherwise readily/publicly accessible to the EPA via the web. See OPP Guidance for	**Required Activities:** 06.02.01 Monitor compliance with pesticide water quality risk mitigation measures, and respond to pesticide water contamination events especially where water quality standards or other reference points are threatened.

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	Submission of State and Tribal Water Quality Monitoring Data, Appendix 6. 06.01.02 Evaluate: Identify ***pesticides of concern*** (POC) by evaluating a list of ***pesticides of interest*** (pesticides which have potential to threaten local resources) to determine if those pesticides may be found at concentration levels locally that are approaching or exceeding ***reference points*** and therefore are a threat to local water quality. The base list of pesticides of interest can be found in Appendix 7. 06.01.03 Manage: Actively manage ***pesticides of concern*** beyond the label to reduce or prevent further contamination of local water resources. 06.01.04 Demonstrate progress: Show the management strategy has effectively reduced the risk that concentrations will exceed ***reference points.*** 06.01.05 Re-evaluate pesticides if there is new information that could affect risk (e.g., new hazard data, significant increase in use, a new OPP risk assessment or registration decision involving a water quality concern). 06.01.06 Report progress of activities in 06.01.02 – 06.01.05 in POINTS. 06.01.07 Where appropriate, consult with and/or coordinate prevention and protection of water resources with other agencies responsible for water resource protection. 06.01.08 On request from OPP, and in negotiation with your region, evaluate additional pesticides of interest that have water quality concerns. Grantees can add requested pesticides to the Additional Pesticides of Interest list in POINTS, and evaluate to determine whether they are pesticides of concern. 06.01.09 Identify and evaluate additional pesticides of interest that are not on the base list on an as needed basis. These pesticides should be added to the Additional Pesticides of Interest section of POINTS.	
Required Program Area: Product Integrity (19)		
The pesticide registration process is intended to ensure human health and environmental risks are adequately mitigated. Safeguard the basic integrity of the pesticide registration process to protect human health and the environment.	**Required Activities:** N/A	**Required Activities:** 19.02.01 Conduct pesticide establishment inspections. Focus on supplemental distributor products, contract manufacturers, fumigants, RUP or Tox-1 pesticides or other pesticides of regulatory concern to address composition, registration and labeling issues.

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		19.02.02 In support of 19.02.01, collect samples and submit to laboratory for formulation analysis to ensure product composition complies with terms of registration.
Required Program Area: Border Compliance (20)		
Prevent and reduce risks of unsafe products entering the United States by eliminating the distribution of unregistered, misbranded or adulterated pesticides	**Required Activities:** N/A	**Required Activities**: 20.02.01 At the region's request, conduct inspections of imported products at the point of importation or at the point of destination and collect physical samples when appropriate. 20.02.02 At the region's request, conduct PEIs to monitor imported products being used as source materials in the production of new products.

III. GRANTEE PROGRAM AREA PICK-LIST

The table below is a "pick list" of eight program areas. Grantees must, in negotiation with the region, include activities in the work plan that support one program area for OPP, and one program area for OECA. The selected program areas can be aligned (i.e., activities for both OPP and OECA from the same program area) or can be selected from different program areas, depending on regional and local considerations. Activities listed under each program area are examples of activities that help achieve the program goal. If there are other activities that are more appropriate and help reach the intended goal, then they can be used instead. Note each program area is followed by a unique number that links to the FIFRA Template. Each of these program areas support the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Goal	Work Expectations Specific Activities Negotiated between Grantee and Region	
	Activities Supported by OPP Funding	**Activities Supported by OECA Funding**
Pick-List Program Area: Fumigation and Fumigants (5)		
Prevent or reduce incidents resulting from fumigation exposures.	N/A	05.02.02 Monitor compliance with fumigation labels with a focus on structural fumigation and fumigants. Other fumigant uses of interest may include rodent control, granaries, warehouse commodities, etc.

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Pick-List Program Area: Endangered Species Protection (07)		
Limit potential effects from pesticide use to listed species, while at the same time not placing undue burden on agriculture or other pesticide users.	07.01.01 Provide outreach and education on the Endangered Species Protection Program to current and potential pesticide users and pesticide inspectors. 07.01.02 Provide risk assessment and risk mitigation support using EPA's stakeholder engagement process at: http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2012-442-0038 a) Provide 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. b) Comment on exposure assumptions used in risk assessments. c) Comment on the feasibility of proposed, listed species-specific mitigation measures during OPP's standard processes of registration and registration review. d) Review draft bulletins if any are developed in a state's area. 07.01.03 Establish and maintain relationships with local and regional fish and wildlife agencies. 07.01.04 Work with certification and training staff and cooperative extension services to provide endangered species information for pesticide applicator training.	N/A
Pick-List Program Area: Bed bugs (08)		
Minimize the potential for pesticide misuse/overuse and spread of bed bug infestations by increasing understanding of bed bug prevention and control approaches, and ensuring compliance with accepted control approaches.	08.01.01 Provide education, outreach and technical assistance on pesticide safety and integrated pest management control approaches, and guidance for responses to bed bug infestations. 08.01.02 Develop partnerships and cooperation with other federal, state, tribal, and local government agencies, and industry associations to address the bed bug epidemic.	N/A
Pick-List Program Area: Pollinator Protection (09)		
Ensure pollinators are protected from adverse effects of pesticide exposure.	09.01.01 Establish/maintain relationships with federal, state, tribal and local agencies, beekeeper organizations, grower organizations (*e.g.*, commodity groups), crop advisors, pesticide manufacturers (registrants), and other	N/A

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	stakeholder groups within the region to assist where needed in combined pollinator protection activities. 09.01.02 Provide continuing educational opportunities and outreach to keep growers, applicators, and handlers up-to-date on the most recent methods to protect pollinators, such as IPM, BMPs, or softer applications. 09.01.03 Develop and implement managed pollinator protection plans and/or pollinator protection plans focusing on managed bees, as well as monarch butterflies or other native pollinators. 09.01.04 Work with co-regulators and stakeholders to develop measures to determine the effectiveness of these plans in reducing pesticide risk to pollinators. 09.01.05 As appropriate, provide technical assistance, education and outreach to support habitat restoration efforts to enhance/supplement forage for bees and other pollinators, such as the monarch butterfly. 09.01.06 Promote the use of BMPs, integrated roadside vegetation management, and mowing best practices in roadsides, rights-of-ways, or managed natural areas which may support pollinator habitat and in turn support foraging honeybees, monarch butterflies, and other pollinators.	
Pick-List Program Area: School Integrated Pest Management (IPM) (10)		
Decrease unnecessary exposure of children in schools (grades K-12) to pests and pesticides through increased adoption of Integrated Pest Management (IPM) programs.	10.01.01 Provide education, outreach and/or training on IPM approaches to school districts or organizations with influence in schools. 10.01.02 Forge partnerships with state and tribal agencies and/or local chapters of national organizations to increase the adoption of IPM in schools with a focus on the 2016 School IPM Roundtable Participants.	N/A
Pick-List Program Area: Spray Drift (11)		
Reduce spray drift incidents by increasing awareness and adoption of spray drift reduction techniques and technologies.	11.01.01 Conduct education and outreach activities that increase awareness and adoption of spray drift reduction techniques and technologies. 11.01.02 Gather spray drift incident data from the past 2-3 years to form an incident baseline and then gather additional incident data during the grant period. See Appendix 1 for the type of information that should be gathered. 11.01.03 Minimize environmental and non-target risks from public health pesticide applications, and report gathered data	11.02.01 Monitor compliance with spray drift label language and report investigation findings as part of year–end reporting.

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	annually in a separate file attached as part of the end-of-year report.	
Pick-List Program Area: State and Tribal Coordination and Communication (12)		
Where appropriate, support tribal pesticide program capacity building and efficient use of state resources by improving coordination, communication and cooperation between tribes and states to advance pesticide program implementation and increase program efficiencies.	12.01.01 When conducting FIFRA-related training, involve state and tribal staff and managers in training as appropriate in an effort to share expertise and understanding. 12.01.04 Inform tribes of state-issued FIFRA Section 24(c) or applications for a Section 18 registration.	12.02.01 When training FIFRA inspectors, involve state and tribal inspectors in the training as appropriate in an effort to share expertise and understanding. 12.02.02 Offer tribes an opportunity to ride along with state pesticide inspectors, and vice versa, for training purposes. 12.02.03 Share information between states and tribes on tips, complaints, violators, and/or incidents that may be relevant in or near Indian country. 12.02.04 Provide lab support to tribes. 12.02.05 Work with tribes to identify establishments within tribal boundaries.
Pick-List Program Area: Emerging Public Health Pesticide Issues (21)		
Minimize pesticide risk while protecting human health from emerging public health issues.	21.01.01 Conduct outreach and education to impacted communities on methods to minimize pesticide risk while protecting human health. 21.01.02 Coordinate with EPA regions and OPP on pesticide issues related to human health, including Section 18 and 24(c) requests. 21.01.03 Coordinate with all federal, state and local agencies on activities needed to protect human health from pesticide risk, and minimize environmental and non-target risks from public health related pesticide applications. 21.01.04 Identify ways to minimize environmental and non-target risks from public health pesticide applications; promote IPM methods to minimize pesticide applications.	21.02.01 Respond to clearly identified public health pesticide issues by providing compliance monitoring and enforcement.

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IV. SUPPLEMENTAL AND INACTIVE PROGRAM AREAS

The FIFRA Template includes a section to record additional activities which use regional discretionary funds. This section follows the pick-list section with rows titled "Supplemental/Special Project Activity" and "Regional Guidance Activity" for both program and enforcement work. This section should be completed if the region is providing regional discretionary funds for specific work the region has negotiated with the grantee.

For those program areas that were either required or on the pick-list previously and have been "retired" beginning in FY 2018, reporting on activities associated with these programs can still occur in the FIFRA template. Inactive program areas will be captured at the bottom of the work plan tab following the Supplemental/Special Project section. This allows those grantees with multi-year agreements to complete work committed to previously. Please note that reporting on inactive program areas is only required for those grantees that have negotiated with their region to continue working on a program area that is no longer active. Grantees may choose to do this if they are continuing work that is important to their state or tribe. For the purposes of the FIFRA Template, inactive program areas will retain their unique numbers.

V. ADMINISTRATIVE REQUIREMENTS

For the purpose of this section, "grantees" are referred to as "applicants" during the cooperative agreement application process. To ensure an orderly administrative review, programmatic evaluation, and funding of cooperative agreement applications, 40 CFR Part 35.105 requires applications to be received by the Regional Grants Management Offices at least 60 days prior to the beginning of the proposed budget period, or by the date the regional offices provide as a result of EPA's updated budget guidelines. Awards and funds will be made and distributed as promptly as possible once federal budget figures are finalized.

In accordance with 40 CFR Part 35.113, the 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 previous 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. Applicants should be aware that a request for formal deviation may further delay the award. If you have any questions, contact your project officer and the Regional Grants Management Office for clarification.

In addition to this Guidance document, regions and applicants should consult the appropriate regulations in 40 CFR Parts 31 and 35, the Administrator's Policy on Performance-Based Assistance, and the Assistance Administration Manual when preparing, negotiating, and evaluating 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. In addition, a FIFRA Cooperative Agreement Application Review Checklist is included in Appendix 8.

A. Standard Application Forms

Application kits including all the necessary application forms may be obtained from the EPA website at: https://www.epa.gov/grants/application-kit-federal-assistance. All applications must be submitted via the

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grants.gov website: www.grants.gov . The FIFRA Cooperative Agreement Work Plan-Report Template discussed in Appendix 2 must be used as the work plan during submission.

B. Performance Partnership Grants

In the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1996) and EPA's FY 1998 Appropriation Act, Pub. L. 105-65, 111 Stat. 1344, 1373 (1997), Congress authorized the award of PPGs in which states, interstate agencies, tribes, or intertribal consortia can choose to combine two or more environmental program grants. A recent grants policy created in partnership between the Office of Grants and Debarment and the Office of Intergovernmental Relations (the National Program Manager for PPGs) clarifies that universities are also eligible for PPGs, if they are instruments of the state. See Grants Policy Issuance (GPI) 15-01: Performance Partnership Grants for States for more information about university eligibility.

Under a PPG, a recipient can achieve cost and administrative savings through reductions in the amount of grant paperwork as well as simplified accounting requirements that do not require the recipient to account for expenditures in accordance with their original funding sources. With PPGs, recipients can negotiate work plans with EPA that direct federal funds where the recipients need them most to address environmental and public health problems. Recipients also can try new multimedia approaches and initiatives, such as children's health protection programs, multimedia inspections, compliance assistance programs, and ecosystem management that were difficult to fund under traditional categorical grants.

Sections 35.130 through 35.138 of 40 CFR contain requirements that apply only to PPGs for states. Sections 35.530 through 35.538 of 40 CFR contain the requirements for tribes or tribal consortia applying for PPGs.

In negotiating a PPG, regions and applicants should continue to use this FIFRA Cooperative Agreement Guidance to ensure that program and enforcement priorities are met. States and tribes may apply for PPGs for a multi-year budget period not to exceed five years. The application must use the FIFRA template for the FIFRA portion of the work plan under the PPG, and must include core performance measures or accountability measures, as defined by appropriate environmental statutes, regulations and EPA or state policy. PPGs are subject to the same reporting, joint evaluation and other accountability requirements described in 40 CFR Part 35.

Under a PPG applicants have a consolidated PPG budget for accounting and reporting purposes. This means that there is just one budget tracked and reported on annually. This gives applicants the flexibility to realign resources among environmental programs based on negotiated work plan priorities. In some cases, approval from EPA may be required prior to shifting resources. This also allows recipients to meet PPG match requirements from a combination of program sources rather than with program-by-program matches. Match requirements for states can be found in 40 CFR Part 35.136(a) and (b). Match requirements for tribes are described in 40 CFR Part 35.536(b) and (c).

C. Budget Requirements

1. OPP and OECA Cost-Sharing

For 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

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limited to no more than 10%. (*See* 40 CFR Parts 35.530 - 35.538.)]

For other field programs activities and enforcement work, a 15% match by applicants is recommended. This may include in-kind services.

2. Budget Detail

Budget details must conform to cooperative agreement requirements. As available, the applicant should include supportive itemized statements or factsheets to expand upon the expenditures proposed for all required and applicant pick-list program areas and activities. This includes program maintenance for the cost categories of personnel, travel, equipment and supplies. For multi-year assistance agreements, budget detail must be provided for all years the assistance agreement covers, and then modified during annual negotiations as appropriate. Specific information regarding the level of detail can be obtained from your project officer and Regional Grants Management staff.

D. Work Plans

Each cooperative agreement application must be accompanied by a FIFRA Cooperative Agreement Work Plan-Report Template which is consistent with the requirements in 40 CFR 35.107. The FIFRA template must specify:

- The work plan components to be funded under the grant;
- The estimated work years and the estimated funding amounts for each work plan component;
- A performance evaluation process and reporting schedule in accordance with 40 CFR 35.115; and
- The roles and responsibilities of the applicant and EPA in carrying out the work plan commitments.

EPA's Grants Policy Issuance 11-03 requires negotiated work plans to include three "essential elements" that link the work plan commitments to EPA's Strategic Plan. These essential elements are:

1. Strategic Plan Goal: all FIFRA cooperative agreement work plans are linked to two Agency goals in the Agency's FY14-18 Strategic Plan. OPP program work is linked to Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution. OECA enforcement work is linked to Goal 5: Enforcing Environmental Laws.

2. Strategic Plan Objective: OPP program work is linked to Goal 4, Objective 1: Ensure Chemical Safety. OECA enforcement work is linked to Goal 5, Objective 1: Enforce Environmental Laws.

3. Work Plan Commitments and Timeframe: all cooperative agreements must include the commitments for each work plan component and a timeframe for their accomplishment.

This policy supplements or reinforces, but in no way supersedes, existing requirements in 40 CFR Part 35, Subpart A. A current version of EPA's Strategic Plan can be found on EPA's website at: https://www.epa.gov/planandbudget/strategicplan

In addition, all work plans must discuss the drawdown frequency for each budget year to comply with EPA's Grants Policy Issuance GPI 12-6: Timely Obligation, Award and Expenditure of EPA Grant Funds. The FIFRA template is compliant with both these directives.

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As indicated above, the cooperative agreement must include a timeframe and evaluation plan that is mutually acceptable to EPA and applicants. At a minimum, the plan should include a schedule for conducting timely end-of-year evaluations (EOY reports), preferably on-site (if the regional office's budget allows). While mid-year evaluation reports are not required, informal mid-year discussions are encouraged to ensure work plan commitments are on track. This is an opportunity for the project officers and grantees to assess progress and make any needed mid-year adjustments.

The applicant and the project officer should work closely together to ensure activities in the work plan support national, state, tribal, and local priorities, and are consistent with applicable federal statutes, regulations, circulars, and Executive Orders, as well as EPA delegations, approvals, or authorizations. The Agency recognizes that activities may change as national and local conditions and priorities are updated. Therefore, an updated work plan must be submitted annually for review and approval. This should be done with the application if applying for funding annually.

The work plan is negotiated between the applicant and project officer. Please note that if an applicant or project officer proposes a work plan that differs significantly from the program areas, goals, activities, or performance measures in this Guidance, the region must consult with the appropriate National Program Manager (OPP and/or OECA) before agreeing to the work plan. The components of the work plan are specified in the FIFRA template.

E. Accountability of State/Tribal Cooperative Agreement Funds

According to 40 CFR 31.20, applicants must expend and account for funds awarded in accordance with state/territory/tribal laws and procedures. Fiscal control and accounting procedures must be sufficient to:

1) Track the expenditure of funds separately for at least the certification program, the other required program areas, and for each additional program area 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 their application that they will ensure that the activities detailed in 40 CFR 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 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 in 40 CFR 31.30, recipients and sub-recipients can re-budget within the approved direct cost budget. Certain types of changes require prior

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approval [see 40 CFR 31.30(c) through 31.30 (f)]. The regional project officer can provide more information on re-budgeting requests.

F. Quality Management Plans (QMPs) and Quality Assurance Project Plans (QAPPs)

All state and tribal environmental programs that receive EPA assistance agreement funds and generate data, must have a quality system in place conforming to the American National Standard Institute ANSI/ASQC E4-2004, *Quality Systems for Environmental Data and Technology Programs-Requirements with Guidance for Use*. This quality system must be applied to all environmental programs within the scope of the assistance agreement. Environmental programs are those that 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 applying for EPA assistance must 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 grantee.
2. The QMP will 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 the Agency decides to fund the project, the EPA will include a term and condition in the assistance agreement. This term and condition requires the applicant to submit the QMP within a specified time after award of the agreement and notifies the applicant that work involving environmental programs cannot begin until the EPA Project Officer informs them that the QMP has been approved.
   The Assistance Agreement requires the applicant to submit Quality Assurance Project Plans (QAPPs) to the 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 must be prepared using EPA Requirements for Quality Assurance Project Plans (QA/R-5) https://www.epa.gov/sites/production/files/2015-06/documents/finalqaappver9.pdf
3. Approval of the applicant's QMP by the EPA Project Officer and the EPA Quality Assurance Manager, may allow delegation of the authority to review and approve QAPPs to the applicant based on procedures documented in the QMP.

AGENCY DOCUMENTATION:

The 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. In addition, the QMP must describe how the EPA organization will conduct oversight of the assistance agreement to assure its implementation as documented. The QMPs and associated QAPPs are submitted to the regional Quality Assurance offices for review and approval; then reviewed and approved by the FIFRA project officers.

G. Laboratory Competency

Agency Policy Directive Number FEM-2012-02, Revision 1 requires that organizations performing activities involving the use or generation of environmental data under covered assistance agreements must provide the Agency with demonstration of competency in the field(s) of expertise. This policy applies to

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competitive and non-competitive assistance agreements expected to exceed a total maximum value of $200,000 (in federal funding)
Demonstration of lab competency may include but is not be limited to:

- Ongoing participation by the organization in proficiency testing or round robin programs conducted by external organizations; and
- Other pertinent documentation that demonstrates competency (e.g., appropriate ISO certification, and past performance to similar statement of work).

It should be noted that whomever is paying for the data specifies the accepted demonstration of competency. For example, a region paying for the laboratory to do FIFRA residue samples for enforcement gets to specify what certification they will accept, if they want proficiency samples, whether or not the QMP and QAPP are acceptable, and what quality assurance and quality control is required. Additional information can be found at:
(https://www.epa.gov/sites/production/files/2015-03/documents/competency-policy-aaia-new.pdf)

H. Sustainability Considerations

Beginning January 1, 2017, Grants Policy Issuance (GPI) 17-01: Sustainability in EPA Assistance Agreements goes into effect for all assistance agreements. This policy encourages the integration of sustainability considerations into assistance agreements awarded by EPA. Sustainability considerations will depend upon the technical and programmatic nature of, and statutory/regulatory framework for, the program and may include, as appropriate, the following:

1. Develop a Green House Gas emissions inventory and a climate action plan
2. Implement sustainable water infrastructure practices
3. Utilize clean energy or implement other energy efficiency practices
4. Implement sustainable construction practices (green building)
5. Remediate contaminated sites with a reduced environmental footprint
6. Utilize fuel efficient vehicles
7. Purchase or lease more sustainable equipment, supplies, and services
8. Implement sustainable materials management practices (reduce, reuse, recycle)
9. Convene green conferences/meetings and alternatives to traditional travel
10. Consider other practices that directly reduce water, materials, climate, energy, or air impacts

This policy furthers the goals of the EPA's Strategic Plan and the cross-agency strategy and Administrator's goal of Working toward a Sustainable Future.

I. Certification Concerning and Disclosure of "Influencing Activities"

All applicants (including state agencies) who request or receive grants or cooperative agreements exceeding $100,000 must file a form with the awarding agency certifying that the applicant has not used, and will not use, federal funds to influence the award of the grant or cooperative agreement. The applicant must 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 forms can be found in the application kit online at: https://www.epa.gov/grants/epa-grantee-forms .

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J. Debarment and Suspension Certification

Recipients must fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipients are responsible for ensuring that any lower tier "covered transaction" includes a term or condition requiring compliance with Subpart C. A covered transaction is defined as a nonprocurement or procurement transaction and is described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions." Recipients are responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information on the System for Award Management (SAM) website located at: https://www.sam.gov/portal/SAM/#1#1 . This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance.

VI. APPLICATION REVIEW PROCEDURES

All applications must be submitted via the Grants.gov website: www.grants.gov . Regions will receive these applications from the Grants.gov site, and then review the application to ensure all of the required elements have been addressed. For additional information, see Appendix 9, EPA Pesticide State/Tribal Cooperative Agreement Application Review Procedures.

VII. ALLOTMENT OF STATE/TRIBAL COOPERATIVE AGREEMENT FUNDS

Both program and enforcement allotments for states and tribes are based on formulas for many of the program areas. Allotments are made annually and distributed to the regions. Actual final state allocations awarded by the EPA regions may vary from those calculated by the national formulas due to the fact that regions are authorized to shift funds between grantees and across non-enforcement pesticide programs to address local conditions, priorities and special projects not considered in the national formulas. The only exception to this is funding allocated for applicator certification programs. The reasons for varying from the allocations determined by national formulas must be documented by the regions. For more information about the program and enforcement allotment formulas, contact your region, OPP or OECA.

VIII. REPORTING AND ENFORCEMENT MEASURES

A. Reporting

Recipients of cooperative agreement funding must submit reports as required by the EPA assistance agreement regulations or as negotiated with the regions. The FIFRA Cooperative Agreement Work Plan-Report Template must be used for grantee reporting for all FIFRA cooperative agreements. The FIFRA template includes the 5700-33H Forms, and the performance measures form. Grantees will also enter data into the Certification Plan and Reporting Database (CPARD) for worker safety, and enter data into the

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Pesticides of Interest Tracking System (POINTS) database for pesticides in water. Information entered into CPARD and POINTS does need not to be repeated in the FIFRA template.

Table 1, Summary of Reports and Annual Due Dates

TEMPLATE REPORTING FORMS & DATABASES	GRANTEE SUBMISSION DATE TO REGION	REGION SUBMISSION DATE TO FIFRA GRANTS MAILBOX[1]	GUIDANCE IN APPENDIX
End-of-year Cooperative Agreement Evaluation Reports[1]	Annually, as negotiated with the region; within 90 days after project period ends.	February 28th	2
Performance measures form	Annually, as negotiated with the region; within 90 days after project period ends.	February 28th	N/A
EPA 5700-33H Form[2]	Annually, as negotiated with the region; within 90 days after project period ends.	February 28th	10
EPA 5700-33H WPS[2]	Annually, as negotiated with the region; within 90 days after project period ends.	February 28th	11
EPA 5700-33H[2] Container/Containment	Annually, as negotiated with the region; within 90 days after project period ends.	February 28th	12
Certification Plan and Reporting Database (CPARD)	December 31st	N/A	N/A
Pesticides of Interest Tracking System (POINTS)	December 31st	N/A	N/A
Existing Pesticide Water Quality Monitoring Data for consideration in Pesticide Registration Review	As specified on a case by case basis.	As specified on a case by case basis.	6

[1]Regions should submit a copy of their end-of-year reports to the grantees at the same time.
[2] Information contained in these forms must be provided through the FIFRA template.

Information contained in these reports is used to ensure accountability of resources, verify that cooperative agreements are consistent with this FIFRA Cooperative Agreement Guidance, ensure support of the National Pesticide Program goals and performance measures, and provides feedback from the field on the success of regulatory requirements.

Grantees will use the FIFRA template to submit their end-of-year reports and inspection forms to the regions annually as negotiated with the regions, within 90 days after the grant project period ends. Once project officers receive the end-of-year reports contained in the FIFRA template, they will review the reports and discuss their findings during the end-of-year meeting with grantees. The project officers will then finalize their end-of-year reports, send them to the grantees to check for accuracy, and then submit the FIFRA template electronically to a joint OPP/OECA mailbox: FIFRA-EOYReports@epa.gov by February 28th each year.

1. High -Level Pesticide Incidents and FIFRA Referrals

Recipients are required to report to the regions "high level pesticide incidents" involving serious adverse effects to human health or the environment which may require close cooperation with EPA or other agencies to conduct an investigation or bring the incident under control or to a resolution. Reportable high level

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pesticides incidents may occur with pesticides, pesticidal devices and treated articles. These high level incidents may be in addition to section 26 and 27 referrals. See Table 2, Comparison Chart of FIIFRA Referrals/Reports below. The region will then forward this information to the Branch Chief of the Government and International Services Branch in OPP, the Branch Chief of the Pesticides, Waste, and Toxics Branch in the Office of Compliance in OECA, and the Branch Chief of the Pesticides and Tanks Enforcement Branch in the Office of Civil Enforcement in OECA. See Appendix 13, Reporting and Coordination of High Level Pesticide Incidents, for more information.

Information on high-level incidents is useful to OPP to determine if there are patterns of incidents requiring new risk mitigation, such as label changes or additional regulation. For the FY18-21 grant period, investigations involving pollinators are considered high level and should be routinely reported because of the information they may provide as to the causes of pollinator decline. All known or suspected pesticide incidents involving pollinators, should be reported to OPP at: beekill@epa.gov with a copy of the reported incident to the regional project officer.

Table 2, Comparison Chart of FIFRA Referrals/Reports

	INFORMAL REFERRALS	FIFRA SECTION 27 REFERRALS	HIGH LEVEL INCIDENTS/ REPORTS
What are they?	Referrals containing information/tip of a possible violation of federal or state/tribal laws to a FIFRA grantee that may or may not result in the grantee conducting an inspection. An informal referral may lead to a Section 27 referral.	In accordance with FIFRA Section 27, EPA in consultation with each state identifies, in writing, criteria for formal referrals to the state known as "significant incidents." The negotiated agreement contains criteria for the selection of significant pesticide use cases. The criteria can vary from state to state. A Section 27 referral may also be a high level incident report.	FIFRA grantees are required to report to the regions "high level pesticide incidents" involving serious adverse effects to human health or the environment which may require close cooperation with EPA or other agencies. Regions then report to OPP and OECA, who reach out to other offices/agencies as appropriate. A high level incident is not necessarily a Section 27 referral.
Where defined?	1983 Final Interpretive Rule (FR Vol. 48, No.3, 1/5/1983, pages 407-411)	FIFRA Section 27; 1983 Final Interpretive Rule	Appendix 13 of the FY18-21 FIFRA Cooperative Agreement Guidance
Intent of the referral?	Provide information/tip to a grantee concerning a possible FIFRA violation.	Ensure an appropriate investigation is conducted and enforcement, if necessary, is taken by a state concerning a "significant" pesticide misuse.	Communicate information to all EPA offices who need to know about high level FIFRA incidents and ensure appropriate follow-up/coordination within EPA and other agencies.
Are they tracked?	Tracking of informal referrals is determined by the region on a case by case basis.	Section 27 referrals are formally tracked by the regional offices.	High level incident reports are not formally tracked unless they qualify as Section 27 referrals.

2. Enforcement Measures/Measures eReporting

Performance measures are a vital part of running a program. Measures allow a program to determine and analyze what they do well; if resources are used as planned; inform future investments; inform legislators and the public on the impact and value of the program and provide insight on how to make the pesticide program more effective. The Pesticide Enforcement Measures are included in the FIFRA Work Plan and Report Template.

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APPENDIX 1:

SUPPLEMENTAL INFORMATION FOR PROGRAM AREAS

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SUPPLEMENTAL INFORMATION FOR PROGRAM AREAS

This document provides additional information on required and grantee pick-list program areas to supplement the information listed in Sections II and III of the FIFRA Cooperative Agreement Guidance. The goal of this appendix is to provide background information that clarifies the expectation for each program area.

GENERAL INFORMATION

This appendix has two sections "Required Program Areas" and "Grantee Program Area Pick-List." The program areas in these sections are listed in the order they appear in the Guidance, and contain background information that may be useful. The goal, program description and enforcement considerations are listed for each program area.

REPORTING REQUIREMENTS AND PERFORMANCE MEASURES

Recipients are required to report annually on all required program areas, and those program areas selected from the Grantee Program Areas Pick-List. The FIFRA Cooperative Agreement Work Plan-Report Template should be used for grantee reporting under the FIFRA cooperative agreements. In some cases, there are additional reporting requirements noted in the program area descriptions below. Some of these program areas may also require specific information for performance measures associated with that program.

REQUIRED PROGRAM AREAS

There are six required program areas described below which correspond with Section II of the FY 2018-2021 FIFRA Cooperative Agreement Guidance on page 5.

A. BASIC PESTICIDE PROGRAM

Goal

The Basic Pesticide Program and the activities described in this section of the Guidance supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, enforce environmental laws.

Program Description

The baseline activities mandated for the "Basic Pesticide Program" are those activities that are considered regular, routine work which is unlikely to change much from year to year. However, these activities are also those that EPA believes are necessary to maintain a viable and credible pesticide regulatory and enforcement field program, to achieve environmental results and support the National Pesticide Program's performance measures.

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All grantees are expected to invest some level of effort to support Basic Pesticide Program activities and these activities must appear in grantee work plans. The level of effort and resources devoted to the basic program activities may be negotiated between the grantee and EPA regional offices.

Enforcement Considerations

The pesticide compliance and enforcement activities grantees perform help monitor, identify, correct, and deter noncompliance and reduce chemical risks. Compliance monitoring activities help support other Agency goals including reducing chemical risks and protecting underserved and vulnerable populations. Grantee activities should be consistent with the national Compliance Monitoring Strategy (Appendix 5).

i. Compliance Assistance

Compliance assistance should not be performed in lieu of enforcement. Potential violations should be thoroughly documented. The region and grantee should agree on the compliance assistance activities to be conducted where appropriate. These activities may include:

- Provide outreach materials to improve compliance, for example, in areas where regulatory requirements are new or violations are occurring due to a lack of understanding;
- Conduct seminars or public meetings with the regulated industry to explain requirements or answer questions;
- Provide remedial training for violators; and
- Develop programs which reflect the EPA's policies on self-audits.

When new EPA policies are issued, grantees are encouraged to reflect such policies within their programs as warranted.

Grantees are encouraged to use the National Agriculture Center (Ag Center) services to support compliance assistance. The Ag Center was developed by OECA to help producers of agricultural commodities 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 Ag Center provides information to state regulatory programs to assist them in meeting the compliance assistance needs of their regulated agricultural communities.

The Ag Center relies on existing distribution mechanisms, such as USDA-Extension, state pesticide regulatory agencies, and crop consultants to communicate information to the agricultural community. Grantees are encouraged to provide feedback to the Ag Center on its services to ensure their needs are being met. For more information, visit the Ag Center website at: https://www.epa.gov/agriculture

ii. Types of Inspections

Common inspections include the following:

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Producer Establishment Inspections (PEIs): These inspections should be targeted with the intention of conducting inspections at all PEIs over an extended period of time on a routine cycle. Emphasis on PEIs focuses resources at the source of the product and therefore, ensures product label changes have been incorporated, products are registered, product labels and labeling are in conformance with their registrations, and ensures the integrity of the products. Grantees should request that the regions provide name, address and products reported as produced at that establishment for each PEI prior to an inspection. Because pesticide production data is generally treated as confidential business information (CBI), grantees should not attempt to collect production data on the amount produced at the establishment if the inspection is conducted utilizing FIFRA credentials and citing FIFRA inspection authority. State and tribal inspectors may request that production information be sent to the regional office for verification. If the establishment reports unregistered pesticides being produced for export the inspector should document Foreign Purchaser Acknowledgement Statements (FPAS) for the unregistered products.

Contract Manufacturers: Contract manufacturing is a common practice within the industry. Any person producing a pesticide under contract to the registrant, whether as a toll manufacturer, supplemental registrant, or refilling establishment 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.

Dealer/Distributor/Retailer (Marketplace) Inspections: These inspections should be conducted on a routine basis to ensure product packaging and labeling compliance as well as compliance with container/containment regulations, 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 and enforcement action.

E-Commerce: EPA developed e-commerce compliance/enforcement strategy documents. Contact the regional office for more information on these documents. They ensure that pesticides and pesticide services are marketed in accordance with state and federal laws and regulations. The goal is to ensure that pesticides that are distributed and sold in e-commerce are treated the same as pesticides marketed in the more traditional manner. Grantees should include inspections of websites selling pesticides and pesticidal products as part of their core marketplace inspections.

Misuse: Most states and territories with cooperative agreements have primary responsibility under FIFRA for pesticide use violations (primacy) pursuant to FIFRA Section 26. Tribes are not eligible for primacy. However, tribes with pesticide enforcement cooperative agreements with the EPA will be accorded the same responsibility to investigate and take enforcement action in instances of pesticide use violations as states have under FIFRA's primacy provisions, if they have tribal laws and regulations governing use violations on tribal lands. Investigations conducted by tribal inspectors using the EPA credentials must be turned over to the regional office for enforcement action. States should continue to address pesticide use violations, particularly as it relates to WPS, food safety, structural pest control, and drift.

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Imports: When requested by a region, grantees should conduct inspections for imported pesticides with special emphasis on determining if a pesticide is registered in the United States, and the uses on the label are consistent with the FIFRA approved label. 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. Import inspections conducted by states or tribes must be done using federal EPA credentials and EPA forms.

Certified Applicator Inspections: These inspections monitor the applicators compliance with certification requirements and whether required records are being maintained. Additionally, to the extent possible through a record review, the inspector should determine whether the applicator is applying pesticides only in those areas for which certification has been issued and whether the records indicate that all applications have been made in compliance with all applicable laws and regulations.

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, the EPA is particularly concerned about the effectiveness of antimicrobial pesticides because their efficacy is not easily observable, and because of the public health implications. Grantees may be asked to collect samples as needed to ensure efficacy of these products.

Cancellations, Suspensions, Other Major Regulatory Actions, Recalls, and National High Risk Initiatives: Grantees are required to implement cancellation or suspension orders, National Compliance Strategies for canceled or suspended pesticide products and other major regulatory actions. Grantees 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 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 (e.g., label improvement programs, etc.).

EPA may require registrants and distributors to recall pesticide products which have been both suspended and canceled. Once these recall requirements are effective, grantees 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 grantees 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 CFR Part 165. Violations of EPA recalls should be referred to the appropriate region. Grantees may also be requested to participate in national initiatives to address specific risks. OECA will work with regions and grantees to develop and implement such initiatives. Because the workload in this area cannot be anticipated in advance, it is understood that grantees may renegotiate the outputs in the cooperative agreement upon receipt of requests to conduct activities in the above areas.

iii. Monitoring Section 18 Emergency Exemptions, Section 24(c) Special Local Need Registrations, and Section 5 Experimental Use Permits

Both federal and state agencies may be exempted from any provision under FIFRA by the Administrator if an emergency condition exists. Each work plan should reflect how the grantee plans to monitor and follow-up on *Section 18 Emergency Exemptions* to ensure compliance with the terms and conditions of Section 18s within the state, especially suspected misuse violations. The number of Section 18 inspections should be negotiated between the region and the grantee.

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Section 24(c) Special Local Needs allows the state to register additional uses of currently registered pesticides in their state. If the 24(c) uses proposed by the state are approved by EPA, the state shall monitor the sale, distribution and use of the particular pesticide in accordance with the 24(c) requirements. Each cooperative agreement work plan should reflect how the state plans to monitor and follow-up on Section 24(c) registrations 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 grantee.

Section 5 allows any person to apply for an *Experimental Use Permit (EUP)* to accumulate information necessary to register a pesticide. If approved, the EUP contains terms and conditions for the distribution and use of the experimental pesticide. Each work plan should reflect how the grantee plans to monitor 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 grantee.

iv. Section 27 Referrals

Section 27 of FIFRA requires EPA to refer to the states any information the Agency receives indicating a significant violation of pesticide use laws. In accordance with the Final Interpretive Rule governing FIFRA Sections 26 and 27, EPA in consultation with each state should identify, in writing, criteria for formal referral to the state. These criteria should consider those pesticide activities in the state that present the greatest potential for harm to health and the environment. The negotiated written agreement between the state and the region should contain the criteria for the selection of significant pesticide use cases.

All pesticide use cases identified as "significant" will be referred to the state by EPA in writing, and will be formally tracked as set forth in the OECA's Final Interpretive Rule. All other cases will be referred to the state and will not be formally tracked under Section 27.

v. Laboratory Support

Each year, EPA provides a small grant on a rotating basis to state labs that support pesticide monitoring and enforcement activities. Traditionally, the funds have been used to support the purchase of lab equipment. The funds 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 state's pesticide enforcement program, and must comply with all appropriate grant regulations and policies.

B. PESTICIDE WORKER SAFETY: WORKER PROTECTION STANDARD

Goal

The goal of this program area is to prevent or reduce occupational pesticide exposures, incidents and illnesses from pesticide use, especially uses that pose high risks or high exposures to workers and handlers. Ensuring effective implementation of the Agency's pesticide worker safety program remains a high priority for EPA and is important to the Agency's overall strategy to ensure chemical safety, prevent pollution, advance environmental justice and protect children's health. The principal means for

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accomplishing the Agency's worker safety program goals is through implementation of the Worker Protection Standard (WPS) and Pesticide Applicator Certification regulations (40 CFR Parts 170 and 171). Additional information of the pesticide worker safety program can be found at https://www.epa.gov/pesticide-worker-safety.

Program Description

The Agricultural Worker Protection Standard (WPS, 40 CFR Part 170) program priority area is also a key part of OPP's overall work to support the Agency's Environmental Justice efforts. In effect since 1992, the WPS regulations are intended to protect agricultural farmworkers and pesticide handlers on farms, forests, nurseries, and enclosed space production facilities from occupational exposure to pesticides. Agricultural workers are exposed to pesticide residues on plants or when mixing, loading or applying pesticides. More than 2 million farmworkers nationwide receive protections under this regulation. The WPS program is critical to assuring that agricultural farmworkers, which represent some of the most economically disadvantaged people in the U.S., are protected from occupational pesticide hazards. Grantee activities, such as outreach and education efforts to this environmental justice community, are important to help protect this vulnerable population from occupational pesticide hazards and ensure their safety in the workplace.

i. Part 170 Worker Protection Standard (WPS) Rule Requirements and Changes

On November 2, 2015, EPA published final rule revisions to the WPS that address pesticide safety training, notification, hazard communication, use of personal protective equipment (PPE), and decontamination supplies. These revisions are intended to reduce the number and severity of pesticide exposure incidents and prevent unreasonable adverse effects among agricultural workers, pesticide handlers and vulnerable groups, including minority and low income populations, farmworker children, farmworker families and the general population.

The principal Pesticide Worker Safety Program activities for the WPS program area for State and Tribal grantees in FY 2018-21 will be to implement the November 2, 2015, rule revisions to the Part 170 WPS rule, and carry out WPS program implementation activities in accordance with this and other applicable EPA guidance (e.g., WPS Inspection Manual, FIFRA Project Officer Manual, FIFRA Project Officer Manual, WPS Interpretive Policy guidance, Region- and program-specific WPS guidance, etc.). Specific activities include:

- Conduct WPS-related outreach, education and technical assistance on the revised rule's requirements to the regulated and impacted community:

    a. Provide outreach on the key requirements and impacts of the revised rules to the regulated and protected communities, and key stakeholder groups in the state or Indian country (e.g., agricultural employers, commercial pesticide handler employers, farmworkers, agricultural organizations, crop/commodity groups, farmworker advocacy groups, migrant health care providers, regulatory partners, key NGO stakeholders, and other affected agencies and/or organizations). This includes continuing to communicate information about existing WPS rule requirements to the regulated community and other program stakeholders.

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b. Disseminate national and state/tribal outreach and training materials to growers and stakeholders via compliance assistance visits, attendance at grower meetings, etc.

c. Leverage State Land Grant Universities/University Extension/Tribal Education networks and online resources to reach growers, ag producers.

d. Provide compliance assistance to WPS-affected growers and employers.

e. Update state/tribal webpages and social media with relevant information and links to key WPS materials.

- Support WPS worker & handler training activities:
  a. Assist in the development and distribution of EPA approved WPS training materials for workers and handlers to ensure that employers and trainers can comply with new WPS training requirements.

  b. Facilitate adoption of EPA-approved WPS Train-the-Trainer (TTT) programs to improve the quality and effectiveness of WPS trainers/training.

  c. Update existing state/tribal-level training or educational materials as applicable and/or /appropriate.

- Ensure 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.

- Attend and participate in any WPS training efforts initiated by HQ or EPA Regions, and /or other WPS trainings taking place in the state or Indian country.

ii. Supplemental Activities to Support WPS Implementation

As resources allow, grantees are encouraged to undertake work on one or more of the supplemental activities listed below. The Agency believes these optional activities will enhance program implementation and lead to better overall protection for pesticide workers. Grantees with high populations of farmworkers or unique pesticide worker safety issues should consider a higher level of activity in this program area.

- Establish EPA-approved WPS Train-the-Trainer (TTT) Programs. The EPA encourages grantees to support the establishment of state/tribal WPS TTT programs that will improve the quality of WPS trainers and WPS training programs. In association with a cooperative agreement partner, EPA is supporting the development of national WPS TTT materials and programs, and encourages grantees to promote and use these materials to establish WPS TTT programs in the state or Indian country and support existing WPS TTT programs.

- Support programs and provide resources to facilitate employer compliance with the new WPS requirements related to respirator use (e.g., medical evaluation, fit-testing and respirator training). This may include developing partnerships with medical providers, regulatory partners, grower and commodity groups, and/or NGOs to support understanding and adoption of the requirements as well as providing resources and mechanisms for fulfilling the requirements.

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- Work with Community-Based WPS Training Providers. Grantees should work with community-based training providers, such as AFOP/Americorp and other groups, to assure training providers are meeting WPS requirements and any applicable grantee requirements. Training providers should also be appropriately linked with members of the agricultural community so their services can be utilized more effectively.

- Develop Cooperative Relationships with Farmworker Service Organizations. Grantees should identify groups that provide services to farmworkers to establish cooperative relationships and better communications and linkages. 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.

- Support the National Strategy for Outreach to Health Care Providers. The National Strategy for Outreach to Health Care Providers is an important component of the Agency's pesticide worker safety program. It is the cornerstone of the EPA's effort to improve recognition and management of pesticide poisonings by health care providers, and is key to facilitating better communications regarding pesticide incidents.

Enforcement Considerations

EPA's goal for the Worker Protection requirements is to help create a safer work environment in which agricultural workers, their employers, and pesticide handlers can perform tasks without concern about pesticide exposure during and after an application. For this reason, grantees must conduct agricultural use inspections focused on WPS compliance. Enforcements activities include:

- When reporting WPS inspections on the WPS 5700 Form, states should follow the criteria set forth in the EPA WPS Agricultural Inspection Manual. State enforcement actions should be reported on the WPS 5700 Form in the FIFRA Work Plan-Report Template with a brief narrative description about each noteworthy civil or criminal penalty enforcement action resulting from a WPS inspection. The 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.

- Routine Tier I WPS use inspections should be conducted to ensure coverage of agricultural establishments regulated under the WPS. Grantees should focus their worker protection compliance monitoring activities on the types of establishments where high risk pesticides are used or high exposure scenarios are encountered (i.e., areas that have the highest likelihood of pesticide worker and handler risk). Examples include: (1) timing inspections during periods of pesticide application to ensure compliance with key worker provisions; (2) visiting sites with labor-intensive crops; (3) visiting employers with large numbers of workers; (4) timing inspections during the growing season to coincide with high-risk labor practices and worker exposure scenarios; and (5) timing inspections during times when high-risk pesticides would be applied at a specific time of year as a matter of general crop practice.

- Particular attention should be given to follow-up inspections at agricultural establishments where prior enforcement actions for WPS violations were taken. Follow up inspections should occur in a timely manner as the grantee deems appropriate.

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- States should provide information on the number of other enforcement actions resulting from WPS inspections such as stop sale/use orders and warning letters in each of the reporting categories.

C. PESTICIDE WORKER SAFETY: PESTICIDE APPLICATOR CERTIFICATION

Goal

The goal of this program area is to prevent or reduce occupational pesticide exposures, incidents and illnesses from pesticides, especially ones that pose high risks or high exposures to workers and handlers. Ensuring effective implementation of the Agency's pesticide worker safety program remains a high priority for EPA and is important to the Agency's overall strategy to ensure chemical safety, prevent pollution, advance environmental justice and protect children's health. 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 regulations (40 CFR Parts 170 and 171). Additional information of the pesticide worker safety program can be found at https://www.epa.gov/pesticide-worker-safety.

Program Description

Implementation of the Certification of Pesticide Applicators rule (40 CFR Part 171) and corresponding certification and training (C&T) program is also a key part of OPP's overall work to ensure chemical safety, prevent pollution, advance environmental justice and protect children's health. The C&T program is critical to ensuring that persons using or supervising the use of restricted-use pesticides (RUPs) are competent to use these products without causing unreasonable adverse effects to human health or the environment and to provide a mechanism by which states, tribes, and federal agencies can administer their own programs to certify applicators of RUPs as competent. The C&T program also plays a vital role in ensuring that important pesticide tools remain available to pest control officials and users to address critical pest management needs.

i. Part 171 Pesticide Applicator Certification Rule Requirements and Changes

On January 4, 2017, EPA published final rule revisions to the Certification of Pesticide Applicators rule (40 CFR Part 171) that address private applicator competency, standards for recertification programs, standards for supervision, competency requirements for noncertified applicators applying RUPs under the supervision of a certified applicator, minimum age for certified and noncertified applicators, application-method specific categories, requirements for state, tribal and federal agency certification plans, and implementation requirements. These revisions are intended to reduce the number and severity of pesticide exposure incidents associated with the use of RUPs, and prevent unreasonable adverse effects among certified applicators, noncertified persons applying under the supervision of a certified applicator, and vulnerable groups, including minority and low income populations, and the general population.

The principal Pesticide Worker Safety Program activities for the C&T program area for State and Tribal grantees for the FY 2018-2021 grant cycle will be to implement the January 4, 2017, rule revisions to the Part 171 rule, and carry out C&T program implementation activities in accordance with this and

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other applicable EPA guidance (e.g., FIFRA Inspection Guidance, FIFRA Project Officer Manual, National Part 171 Program guidance, Region-specific C&T guidance, etc.). Specific activities include:

- Grantees must ensure pesticide applicator certification programs are being implemented and maintained in accordance with their EPA approved certification plans. Grantees should continue implementing pesticide applicator certification programs in accordance with current EPA-approved certification plans and Part 171 requirements until revised, EPA-approved certification plans complying with the new revised Part 171 rule requirements are in place.

- Meet state and tribal certification plan requirements for certification plan maintenance and annual reporting using the Certification Plan and Reporting Database (CPARD). Grantees must ensure their State/Tribal Certification Plans are entered, submitted, maintained, and updated within the Certification Plan and Reporting Database (CPARD) in accordance with the requirements in 40 CFR Part 171. Grantees should submit revised certification plans through CPARD in accordance with program policy and guidance, and update their plans in CPARD annually, making any necessary updates and all pertinent information to reflect any changes to their Certification programs and plans made during the year. Additionally, grantees must use the database system for submitting their required annual Certification Program accomplishment reporting information. Grantees should work with their region if any technical assistance is needed for using CPARD.

- Monitor applicator training programs to ensure quality and that training programs comply with revised rule requirements and applicable standards/guidance. Grantees will monitor initial certification and recertification training programs, as well as training programs for noncertified applicators applying RUPs under the supervision of a certified applicator (as applicable and appropriate), to assure the quality and consistency of training programs. Grantees should participate in applicator training programs as resources permit. Grantees should work with training providers to ensure training programs meet the revised rule's requirements and are providing the information required to ensure applicator knowledge and competency.

- Develop and submit to EPA revised certification plans that meet the requirements of the revised certification rule. This includes making any necessary regulatory and legislative changes and establishing requisite policies or procedures to comply with the revised rule requirements and all applicable Part 171 program guidance regarding development, submission, approval and maintenance of certification plans. Certification plans and programs should be updated and revised as needed to address current competency and exam administration standards in the revised rule, national security concerns, and other emerging regulatory issues addressed in the revised rule's requirements. As part of this activity, grantees should ensure applicator exams are updated as needed, and they should coordinate with training providers to ensure applicator training materials/programs are updated as needed.

    a. The final Certification of Pesticide Applicators rule is effective [insert date 60 days after the date of publication of the final rule in the Federal Register]. The final rule adjusts the proposed implementation timeframe to provide certifying authorities additional flexibility.

    b. Existing certification plans approved by EPA before the effective date of the rule will remain in effect until three years after the effective date of the final rule; if a certifying authority submits an amended certification plan to EPA for approval within three years of the effective date of the final rule, its existing certification plan will remain in effect until EPA has reviewed and

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responded to the amended certification plan, but no longer than two more years, unless EPA authorizes further extension in its approval of an amended certification plan.

c. In its approval of an amended certification plan, EPA will specify how much longer the existing plan may remain in effect while the certifying authority prepares to implement its amended certification plan.

d. EPA will base each certifying authority's implementation period on the particular circumstances of that jurisdiction, but anticipates that most certifying authorities will be allowed two years from the date of EPA approval to implement the plan.

- Provide outreach on the key requirements and impacts of the revised rules to the regulated and protected communities, and key stakeholder groups in the state or Indian country (e.g., certified applicators, RUP dealers, non-certified applicators applying RUPs under the supervisions of a certified applicator, commercial pesticide application businesses, agricultural organizations, crop/commodity groups, training organizations, regulatory partners, key NGO stakeholders, and other affected agencies and/or organizations)

  a. Disseminate national and state/tribal outreach and training materials to growers and stakeholders via compliance assistance visits, attendance at applicator training meetings, etc.

  b. Leverage State Land Grant Universities/University Extension/Tribal Education networks and online resources to reach affected pesticide applicators.

  c. Provide compliance assistance to affected certified applicators, RUP dealers, and supervisors of non-certified applicators.

  d. Update state/tribal webpages and social media with relevant information and links to key applicator training information and materials.

- Update existing state/tribal-level applicator training or educational materials as applicable and/or appropriate.

- Attend and participate in any program-related training efforts initiated by HQ or EPA regions, and /or other trainings taking place in the state or Indian country.

ii. Supplemental Activities to Support C&T Program Implementation

As resources allow, grantees are encouraged to undertake work on one or more of the supplemental activities listed below. The Agency believes these optional activities will enhance C&T program implementation and lead to better overall protection for pesticide applicators, especially noncertified applicators applying RUPs under the supervision of a certified applicator. Grantees with large numbers of certified applicators, noncertified applicators applying RUPs under the supervision of a certified applicator, or unique pesticide applicator certification issues should consider a higher level of activity in this program area.

- Suggest project ideas that would support the implementation of the revised Certification rule to the Pesticide Educational Resources Collaborative (PERC), a cooperative agreement between the Office

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of Pesticide Programs and University of California Davis Extension, in collaboration with Oregon State University. Projects could include the development or revision of manuals, exam banks or other materials. Proposed project ideas can be submitted on PERC's web site: http://pesticideresources.org/.

- Promote Integrated Pest Management (IPM) concepts in applicator certification programs. The EPA encourages grantees to promote voluntary adoption of IPM concepts and principles in their pesticide applicator certification and recertification training materials and programs to raise awareness about and adoption of IPM. Grantees should consider the following activities to promote IPM: review/revise initial certification programs to assure adequate coverage of IPM; and review/revise recertification training programs to assure adequate coverage of IPM concepts and principles, and making IPM-related outreach and education materials and resources available to applicators.

- Support Certification and Training Assessment Group (CTAG) projects. The Agency continues to actively work on projects and activities stemming from the CTAG process and recommendations. Grantees should keep abreast of the ongoing CTAG projects and activities and identify potential opportunities for collaboration with the EPA and CTAG. Grantees should also provide input and comment on CTAG issue papers and other CTAG documents. NOTE: Visit the CTAG website for more information about activities and opportunities for involvement (http://www.ctaginfo.org).

- Undertake efforts to measure program outcomes. Grantees should consider conducting program assessments or developing program measures that help document certification program outcomes. These efforts may include 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.

- Use exam development and validation principles. Where resources permit, grantees should use exam development and validation principles to revise their applicator exams which lead to improved competency of applicators.

Enforcement Considerations

Monitor compliance with certification requirements, and focus on sale/distribution of restricted use pesticides (RUPs) to applicators in fumigation sector(s) of concern due to the high potential for severe, acute incidents from exposure.

Specific Reporting Requirements

The annual Certification Program 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 regional office to get any technical assistance needed to assure they can access and properly use the CPARD system.

Each grantee should continue reporting according to its existing EPA-approved certification plans until EPA has approved the revised certification plan and the grantee has implemented the revised plan.

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D. PESTICIDES IN WATER

Goal

The goal of the Pesticides in Water Program is to ensure that pesticides do not adversely affect the nation's water resources and pose a risk to human health or the environment. Reducing the concentration of pesticides in urban and agricultural watersheds is part of the Agency's Strategic Plan (see Section E below). Work in this program area will protect the environment by implementing EPA's statutes and taking regulatory actions to ensure pesticides do not pose undue risk when used in accordance with the label.

Program Description

Grantees are required to conduct the following activities consistent with the level of effort negotiated with the EPA regional office and reflected in the work plan. Note, existing data can be used as new monitoring data is not required. Program steps include:

1. **Submit Existing Data:** Provide OPP any existing water monitoring data for pesticides that are undergoing registration review and that were not already submitted to EPA or readily accessible to OPP.
2. **Evaluate Pesticides of Interest:** Identify ***pesticides of concern*** (POC) over time by evaluating a list of ***pesticides of interest*** (pesticides which have potential to threaten local resources) to determine if those pesticides may be found at concentration levels locally that are approaching or exceeding ***reference points*** and therefore are a threat to local water quality.
3. **Manage Pesticides of Concern:** Over time, actively manage ***pesticides of concern*** beyond the label to reduce or prevent further contamination of local water resources.
4. **Demonstrate Progress:** Show the management strategy has effectively reduced the risk that concentrations will exceed ***reference points***.
5. **Report Progress:** Enter progress of evaluations, management of pesticides of concern, and effectiveness of management strategies into POINTS annually.

These terms and activities are more fully explained below.

Where appropriate, grantees are encouraged to consult with or coordinate prevention and protection of water resources with other agencies with responsibilities for water resource protection.

i. Submit Existing Data

Grantees should provide OPP with any existing water monitoring data they may have collected for pesticides that are undergoing registration review and that has not already been submitted to EPA, available in the Agency's STORET (short for STOrage and RETrieval) Data Warehouse, linked in the Pesticide of Interest Tracking System (POINTS), or available through other data sources readily accessible to OPP. Providing OPP access to existing water quality monitoring data will help ensure that the Agency has the best available information when conducting its pesticide risk assessments and making registration review decisions.

Ideally, monitoring data sets should be provided in electronic format, i.e., a readable database format that is easy to import into a spreadsheet. Grantees may submit a link to a website, forward electronic

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data files to OPP's water monitoring mailbox at: OPPWaterMonitoringData@epa.gov, or submit data through another method mutually agreed upon by the grantee and EPA. The Agency would like access to all water monitoring data a state or tribe may have collected relevant to pesticides going through registration review. However, water monitoring data would be most useful for risk assessment purposes if it included the following:

- Location (latitude & longitude, if possible, or other reliable location information);
- Sample media (e.g., water, filtered water, bed sediment, tissue);
- Water body type (stream, river or other flowing body; lake, reservoir, or other static body; ground water, nature of aquifer, e.g., surficial or confined);
- Date sampled (month/day/year), and time if available;
- Chemical analyzed and reported concentration;
- Analytical method used and detection limit or limit of quantitation;
- Study objective (i.e., purpose and design of the monitoring study); a copy of a report describing the purpose and design of the monitoring study or internet web address leading to this information would be useful if available;
- Depth to water level for groundwater;
- Well characteristics including well depth, screened interval, and aquifer type if known (e.g., confined vs. unconfined); and
- Well purpose (e.g., ambient vs. drinking water).

A complete set of desirable data characteristics and procedures for submitting water quality monitoring data can be found in Appendix 6, OPP Guidance for Submission of State and Tribal Water Quality Monitoring Data.

ii. Evaluate Pesticides of Interest

Over time, grantees 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 grantee as described in subsection 3 below. Note, new monitoring data does not need to be generated for this evaluation.

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. For the purposes of this FIFRA Grant Guidance, ***pesticides of interest*** are those pesticides that have been identified by the states in the survey conducted by SFIREG in 2005 (listed in Appendix 7), plus any others that are the cause of water quality impairments under CWA §303(d) within the state or tribe, those identified by OPP as a water quality concern during registration review, and any other pesticides a grantee has identified. In addition, grantees can evaluate additional pesticides of interest that have water quality concerns on request from OPP. As an example, OPP can select pesticides from the Registration Review list, from new pesticide registration actions, or in consultation with the SFIREG EQI working committee. Pesticides will be added to the Additional Pesticides of Interest list in POINTS, and evaluated to determine whether they are pesticides of concern.

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The ***reference point*** is used to judge the severity of contamination with regard to potential human health or aquatic life effects. Human health reference points may be based on values such Maximum Contaminant Levels (MCL: http://water.epa.gov/drink/standards/hascience.cfm), Health Advisory Levels (HAL); human health benchmarks, or state/tribal water quality criteria or standards. Aquatic life reference points may be based on values such as EPA Office of Water aquatic life criteria (http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm), OPP aquatic life benchmarks, or state/tribal water quality criteria or benchmarks.

In most cases, evaluations of pesticides of interest can be based on available monitoring data from within a 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, modeling data, or monitoring results and experience from other states or tribes with comparable conditions.

In reviewing the list of pesticides of interest (base list plus those added to the Additional Pesticides of Interest list), states or tribes can be considered having conducted an evaluation if no reasonable exposure is expected for a particular pesticide due to factors such as soil type, use pattern, or volume of use. The pesticide would not need to be elevated to a pesticide of concern, and no further management would 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 either likely to exceed a human health or environmental reference point in localized areas of a state or tribe and therefore should be elevated to a pesticide of concern and managed, or is not likely to approach a reference point and does not need to be 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 (e.g., new hazard data, new EPA risk assessment indicating a pesticide water quality concern), new use patterns, or increased risk of exposure for the pesticide. Typically, regions do not need to negotiate specific commitments in the work plans for re-evaluations. However, the number of re-evaluations should be reported by the grantee as described in the sections below entitled, "Reporting Requirements" and "Performance Measures."

After evaluation, if a grantee 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 should be shared with OPP for consideration in the registration review process. A list of active ingredients that are scheduled for registration review can be viewed at: https://www.epa.gov/pesticide-reevaluation/explanation-registration-review-schedule

Over time, EPA will be looking for states and tribes to evaluate 100% of the *pesticides of interest* including those added to the Additional Pesticides of Interest list in POINTS. Grantees will negotiate the schedule of evaluations and level of effort with the regions to reflect differences in their capabilities, available information, program authorities, resources available, and the relative priority of their pesticides in water concerns in relation to other pesticide concerns that may exist. However, grantees should place priority on evaluations of pesticides of interest for which water quality concerns

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are identified in FIFRA reregistration or registration review.

iii. Manage Pesticides of Concern

Pesticides that are identified as a concern following the evaluation must be managed. At the state or tribal level, a pesticide is ***actively managed*** when extra or focused 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, grantees are encouraged to consult with or coordinate prevention and protection of water resources with other agencies with responsibilities for water resource protection.

The following examples of active management were identified by the EPA/State Workgroup that developed the national pesticide water quality measures in 2005. They are not meant to be exclusive 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.

The schedule, priority and level of effort assigned to managing pesticides of concern should be negotiated in consideration of the resources available to the state or tribe and the relative priority of pesticide in water issues in relation to other pesticide issues the state or tribe is facing. However, OPP recommends that grantees and regions consider placing priority on managing pesticides of concern that have also been identified as water quality concerns in FIFRA reregistration or registration review.

Overtime, EPA will be looking for 100% of *pesticides of concern* to be managed.

iv. *Demonstrate Progress*

Overtime, states and tribes should be able to demonstrate that the management actions they have taken have been successful at reducing pesticide risk to water. Examples for how grantees might demonstrate progress toward reduction of pesticide risk includes:

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- Targeted monitoring of water samples from vulnerable use areas that determines that mitigation measures are preventing residue levels from approaching or exceeding 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);
- 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; and
- Cancelled registrations.

v. Report Progress

Grantees must report their progress of evaluations, management of pesticides of concern, and effectiveness of management strategies into POINTS annually as described in Section D below.

Enforcement Considerations

States and tribes are expected to monitor compliance with pesticide water quality risk mitigation measures, and respond to pesticide water contamination events especially where water quality standards or other reference points are threatened. Label compliance issues should be reported utilizing the Pesticide Enforcement Performance Measures, Measure 3: Compliance with label language for protection of water, soil, and non-target species.

Reporting Requirements

Grantees must annually report the national water quality measures listed in the performance measures section below in the Pesticides of Interest Tracking System (POINTS). POINTS can be found at http://points.wsu.edu. If available, states should also submit any data from water monitoring acquired during the grant year to EPA via the OPP's water monitoring mailbox at: OPPWaterMonitoringData@epa.gov. **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 or links to data on the web, states and tribes are encouraged to cite other studies, reports, literature or information on water quality monitoring to improve or upgrade baseline data on pesticide effects on human health and the environment. If no progress on the performance measures is made, grantees should roll over their data in POINTS from the previous reporting year.

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

- Determine how pesticides of interest were evaluated;
- Determine which pesticides of concern have been identified by states and tribes;
- Identify pesticides of concern that are being actively managed by states and tribes, what management strategies are demonstrating success, and which pesticides 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*; and

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- Identify states in which the FIFRA lead agency is using its resources to address pesticide impaired waters under CWA §303(d).

EPA access to this information will not only further inform and influence its risk assessment and risk management process leading to better registration decisions, it will also provide information the Agency can use to measure its progress in protecting human health and the environment from pesticide risk to water quality.

Programmatic Performance Measures

The pesticides in water program area supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

The programmatic performance measures listed below that will be used to track the performance of the National Pesticides in Water Program. These measures are automatically calculated from data reported annually by grantees into POINTS. 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) can demonstrate improvement in water quality related to pesticides.

Measure 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:

$$\frac{\text{Evaluated Pesticides of Interest}}{\text{Number of Pesticides of Interest}} \times 100$$

Measure 2: Pesticides of Concern Managed

The second measure is aimed at quantifying state and tribal efforts to manage Pesticides of Concern. 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:

$$\frac{\text{Number of Pesticides of Concern managed}}{\text{Number of Pesticides of Concern identified}} \times 100$$

Measure 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:

Number of Pesticides of Concern managed for which

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

Measure 4: Re-Evaluations

A pesticide can only be counted as "evaluated" once. However, grantees should re-evaluate a pesticide if there is new information/data (e.g., new hazard data, new EPA risk assessment indicating a pesticide water quality concern), new use patterns, or increased risk of exposure for the pesticide. A grantee may report a re-evaluation in POINTS when they have considered the new information and documented a conclusion as to whether there are concerns locally that pesticide levels are approaching or exceeding a reference point. The number of re-evaluations will not typically be a negotiated commitment. However, in order to get credit for this work, grantees should track the number of evaluations done annually in POINTS.

Measure 5: No Longer a Pesticide of Concern

Ultimate success in the Pesticides in Water Program 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 report in POINTS the number of pesticides of concern that have been managed and after re-revaluation, 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.

E. PRODUCT INTEGRITY

Goal

The goal of this program area is to ensure that human health and environmental risks are adequately mitigated through the Agency's registration and related labeling process. The Pesticide Product Integrity focus area supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Program Description

Pesticides are registered after undergoing a significant review and risk/benefit analysis intended to ensure that human health and environmental risks are adequately mitigated through the Agency's registration and labeling process. Grantees should conduct compliance monitoring activities, in order to determine composition compliance, label and labeling compliance and product registration. In some cases, grantees may engage in product efficacy activities to verify the integrity of pesticide product registration and labeling.

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Enforcement Considerations

Grantees should focus on producer establishment inspections known to produce supplemental distributor products, RUPs, Tox-1 pesticides, or pesticides of regulatory concern such as fumigants and antimicrobial pesticide products. Grantees should collect product samples and submit these physical samples to their laboratory for formulation analysis to ensure product composition complies with the terms of the registration.

F. BORDER COMPLIANCE

Goal

The border compliance program area supports the EPA OECA National Program Managers Guidance, and the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Program Description

Grantees selecting this program area are expected to assist regions when necessary to monitor movement of imported pesticides within states, territories or tribal lands, and may occur during pre or post-entry. For pre-entry, U.S. Customs and Border Protection (CBP) may refer examinations (e.g., inspections) of pesticide and device shipments prior to entry into the customs territory of the United States to EPA regions, allowing EPA to conduct product label reviews, validation of information provided by importers and brokers prior to arrival (such as with the Notice of Arrival (NOA)), and collection of retail size product and samples from bulk product, as appropriate.

Depending on the regional office's coordination with CBP's port offices, state, tribal and territory inspectors may be able to assist with import inspections that are in geographical proximity to the destination location. In this scenario, the import shipment would be under a "Hold Intact" order by CBP until EPA or its state, tribal or territorial partner has inspected the shipment and the EPA Regional office can make an admissibility determination. This approach would assist our CBP partners by moving hazardous chemicals out of the ports and to what we would assume to be a safer location for storage.

For post entry, inspectors may look at the product at ultimate consignee's establishment (producer establishments or marketplace establishments) as follow up establishment inspections. Many manufacturing use pesticide products are imported as source materials by producers of end-use pesticide products.

Some of these activities may be generated in response to these requests and targeting from the regional office whereas other activities can be initiated based on the states own targeting.

Enforcement Considerations

Pre-entry Inspections

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Grantees should conduct inspections for imported pesticides upon regional request. It is important that the region establish the appropriate steps necessary to meet the "Hold Intact" or "Detain" for inspection requested by CBP in accordance with FIFRA section 17(c) and 19 CFR 12.110-117. The specifics of these inspections should be defined through coordination with the regional office. The inspections should be conducted with federal credentials if EPA has requested the inspection. The inspections may include shipments detained at ports of entry, foreign trade zones, bonded warehouses, CBP central examination centers, or other designated locations as coordinated by the region with CBP.

Post-Entry Inspections
Inspections may be coordinated with the EPA regional office and be conducted at producer facilities and/or retail and distribution centers where the imported products have been delivered.

Reporting Requirements

None.

GRANTEE PROGRAM AREAS PICK-LIST

The following section corresponds with Section III of the FIFRA Cooperative Agreement Guidance on page 9. There are eight Grantee Pick-List Program Areas which are listed in the order they appear in the Guidance.

G. FUMIGANTS AND FUMIGATION

Goal

The goal of this program area is to prevent or reduce incidents resulting from fumigation exposures which is consistent with the Agency's Strategic Plan to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Program Description

Grantees selecting this program area should conduct inspections to ensure product compliance and proper use of fumigant products. Grantees may also conduct producer establishment inspections where fumigants are being produced, or use inspections to monitor compliance with the use of these products. Special emphasis should be placed on structural pest control applications as well as other situations involving fumigants such as rodent control, granaries, warehouse commodities, and other fumigation scenarios where potential human exposure is of concern.

Enforcement Considerations

Reducing risk is ultimately accomplished through compliance with and enforcement of product labels. Grantees should focus on structural fumigant product compliance, as well as related fumigation use activities by conducting use and/or producer establishment inspections to ensure compliance. Grantees should also consider establishing relationships with other federal, state, tribal and local agencies within their region to assist in compliance and enforcement activities.

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H. ENDANGERED SPECIES PROTECTION

The focus of EPA's Endangered Species Protection Program (ESPP) is to evaluate whether pesticide use in a certain geographic area may affect any listed species. If enforceable, pesticide use restrictions are necessary to protect listed species in that area, and the information is relayed through Endangered Species Protection Bulletins.

Goal

Through risk assessment and mitigation, the goal under the 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.

The ESPP supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Program Description

If selected from the Grantee Program Area Pick-List, state and tribal pesticide lead agencies may select from the following list of activities to support the ESPP. A grantee can choose to do one or more of the activities or to do part of an activity, in accordance with the need, level of resources and expertise available in their state or tribe.

i. 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. Topics that could 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 website at https://www.epa.gov/endangered-species/ , "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 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:

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

ii. Risk Assessment and Risk Mitigation Support

Support provided by states and tribes can be in response to litigation, registration review or other registration activities. Information can be provided to EPA using OPP's Stakeholder Engagement Process. Activities may include:

- providing information such as crop data, pesticide use data, monitoring data, and listed species range 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: https://www.epa.gov/pesticide-reevaluation/explanation-registration-review-schedule . 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; and
- reviewing draft Bulletins, should any be developed in a state's area.

iii. Establish and Maintain Relationships

Build 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 (e.g., water sampling);
- reporting to EPA any wildlife incidents suspected of being pesticide-related;
- collaborating on certification & training presentations and workshops; and
- developing joint outreach materials.

iv. Work with Certification and Training Staff and Cooperative Extension Services

Provide endangered species information to Certification and Training Staff and Cooperative Extension Services for Pesticide Applicator Trainings. Activities may include:

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

Reporting Requirements

Grantees should annually collect, summarize, and report to EPA compliance and non-compliance information for all inspections where Endangered Species Bulletins are applicable as described in Section E below (this information should be provided whether or not this program area is selected from

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the pick-list). To help OPP assess the effectiveness of endangered species risk mitigation requirements and Endangered Species Bulletins, please include some information on the pesticide products and bulletin provisions that were violated. The Endangered Species Inspections Report Form can be found in the FIFRA Cooperative Agreement Work Plan-Report Template.

The FIFRA template must be used to submit an end-of-year report that documents endangered species activities conducted as agreed to in the cooperative agreement work plan. Grantees providing risk assessment and risk mitigation support for use in listed species-specific risk assessments for upcoming registration review cases should do so by commenting on the open dockets using the Stakeholder Engagement Process identified at: http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2012-0442-0038

Performance Measures

To determine the effectiveness of the ESPP and the approaches listed above to limit potential effects from pesticide use on federally listed threatened or endangered species, OPP will use compliance information submitted annually (when available) to apply to the following formula to measure progress:

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.

This is a program-specific performance measure.

I. BED BUGS

Goal

The goal of this program area is to minimize the potential for pesticide misuse/overuse and spread of bed bug infestations by increasing understanding of bed bug prevention and control approaches. Efforts to provide bed bug outreach and assistance supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

This priority also supports the Agency's environmental justice goals because economically-challenged segments of the population may have more trouble controlling an infestation due to the relatively high cost of effective treatment, living in more densely populated and multifamily housing, and limited access to information.

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Program Description

Bed bug complaints and infestations have increased markedly in some areas of the country, and bed bug infestations are predicted to remain on the rise. People seeking effective, cheap and rapid solutions have in some cases resorted to the use of unregistered pesticide products or the misuse of registered products. To address this issue, grantee efforts should focus on:

1) Establishing relationships with local HUD offices that provide housing and homeless shelter services to provide outreach and training on bed bug prevention and management;
2) Establishing relationships with local health departments on cooperative efforts to educate and respond to public beg bug inquiries and pesticide misuse issues;
3) Promoting the use of integrated pest management (IPM) for bed bug control;
4) Encouraging use of registered pesticides considered effective against bed bugs that do not pose unreasonable risks to people or the environment;
5) Discouraging the use of unregistered pesticides or the overuse of registered pesticides as measures to control bed bugs;
6) Providing information to the public on bed bug infestations including IPM methods for control;
7) Collaborating with other agencies and stakeholders to share information on bed bug control; and
8) Promoting product and user compliance, focusing on illegal bed bug control claims and the illegal use of products not registered for control of bed bugs.

Where feasible, grantees should use outreach materials already developed and available at the EPA Bed Bug Clearinghouse on the EPA website (https://www.epa.gov/bedbugs/bed-bug-information-clearinghouse). However, if grantees are considering developing additional bed bug outreach materials, they should take steps to avoid duplication of existing materials by consulting with their project officer first, followed by discussions with OPP and the EPA Bed Bug Clearinghouse. Bed bug outreach materials developed by the grantee should also be added to the EPA Bed Bug Clearinghouse.

Enforcement Description

None.

J. POLLINATOR PROTECTION

Goal

Though risk assessment, mitigation, education, and outreach, EPA's goal under the Pollinator Protection Program is to ensure pollinators are protected from potential adverse effects of pesticide exposure. This Pollinator Protection Program supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Program Description

Grantees selecting this Grantee Pick-list Program Area will focus activities on education and outreach to growers, applicators, pesticide handlers, beekeepers and other landscape resource managers to encourage adoption of methods and practices, such as IPM, stewardship, and best management practices (BMPs), intended to protect bees, monarch butterflies, and other pollinators and the resources they rely upon. Grantees should establish and develop relationships within their state or tribe (e.g., state or tribal

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agencies, beekeeper and grower organizations, crop advisors, NGOs, government and university researchers, pesticide registrants, and federal government offices or installations (e.g., DOD, USDA, USGS, DOI)) to promote and assist where needed in pollinator protection activities as they relate to the use of pesticides.

As part of these activities, grantees are encouraged to develop and implement managed pollinator protection plans (MP3s) and/or plans for protection of non-managed pollinators, which may include actions to develop pollinator habitat through broad-reaching efforts with local stakeholders. Grantees should work collaboratively to identify metrics for evaluating the impact of MP3s and broader pollinator protection efforts toward promoting/enhancing the health of honey bees and other pollinators. Grantees are also encouraged to promote the use of best management practices, integrated roadside vegetation management, and mowing best practices in roadsides, rights-of-ways, or managed natural areas which may support pollinator habitat.

Enforcement Description

While there is no enforcement requirement for pollinator protection, grantees should follow the EPA Bee Incident Investigation Guidance, or similar state or tribal guidance, (available online at: https://www.epa.gov/compliance/guidance-inspecting-alleged-cases-pesticide-related-bee-incidents) when investigating a bee incident.

Specific Reporting Requirements

Pollinator incidents and investigations provide OPP valuable information regarding the degree to which pesticides may impact pollinator health, and are associated with pollinator declines. Therefore, grantees must report the results of investigations of all known or suspected pesticide incidents involving pollinators to OPP at: beekill@epa.gov with a copy to the regional project officers.

Basic elements of an incident report are explained in the Guidance referenced above. Useful baseline information includes the location and date of the incident, the species affected, the approximate total number of each species affected, the suspected pesticide(s), whether the pesticide(s) was/were in use at the time of the loss, the crop/area on which the pesticide was applied, and whether residues were detected.

K. SCHOOL INTEGRATED PEST MANAGEMENT (IPM)

Pest control and pesticide use in schools poses special challenges and concerns. Our nation's children spend a considerable amount of their time in schools, as do teachers and school support staff. The National Center for Education Statistics estimates that in 2010, nearly 50 million students attended public elementary and secondary schools, with enrollment rates steadily increasing every year. With this in mind, the Agency is pursuing a program to encourage the adoption of integrated pest management (IPM) practices as a means to reduce unnecessary exposure to, and risk from pests and pesticides in schools and on school grounds. The focus of this program is schools at the elementary through secondary levels (grades K-12). More information can be found at https://www.epa.gov/managing-pests-schools .

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Goal

The goal of this program is to decrease unnecessary exposure of children in schools (grades K-12) to pests and pesticides through increased adoption of verifiable and ongoing IPM programs. Activities to advance school IPM support the Agency's Strategic Plan, to ensure the safety of chemicals and prevent pollution. This activity also supports EPA's children's health goals. See the approaches and regional roles and responsibilities listed in the Agency's "Strategic Plan for School Integrated Pest Management: Federal Fiscal Years 2016-2017," found at https://www.epa.gov/sites/production/files/2016-02/documents/2016-2017_school_ipm_strategic_plan.pdf .

Program Description

Efforts under this program area should increase the adoption of verifiable IPM practices in schools, including the use of reduced risk pesticides, biopesticides, cultural, and physical tools to reduce sources of food, water, and shelter for pests in school buildings and grounds. Verifiable school IPM is an ongoing activity that includes all of these documented elements: understanding pests; setting action thresholds for key pests, i.e., knowing when to take action against key pests; monitoring for pests, their locations and populations; removing conditions that allow pest infestation; and using one or more effective pest control methods including sanitation, structural maintenance, and nonchemical methods in place of or in combination with pesticides.

Key activities for this program area include:

- Support existing and/or develop new relationships, through partnerships, coalitions, and networks that promote and support school IPM, foster the efficient transfer of information, encourage collaboration, reduce duplication of effort and accelerate school IPM adoption within a state (e.g., state departments of education, health, or environment; state associations of school administrators; state PTAs; state associations of school boards; state structural pest control boards; and the local Service Employees International Unions).

- Forge partnerships with state agencies and/or state chapters of national organizations to increase the adoption of IPM in schools with a focus on the 2016 School IPM Roundtable Participants. A list of participants can be found on EPA's webpage: https://www.epa.gov/managing-pests-schools/roundtable-school-integrated-pest-management

- Disseminate existing educational and outreach materials to the states' school systems and conduct educational programs on IPM for school administrators, facility managers, custodial and kitchen staff, school nurses, teachers, students and other key players as appropriate. The EPA's Center of Expertise for School IPM is a great resource for training materials, brochures, presentations, and other educational and outreach materials that may be needed.

Where feasible, grantees should use outreach materials already developed and available from the EPA's Center of Expertise for School IPM or the EPA-funded iSchoolPest Manager website. If grantees are considering developing additional school IPM outreach materials, they should take steps to avoid duplicating existing materials by consulting with the EPA's Center of Expertise for School IPM and by communicating plans with the School IPM Coordinator in your EPA regional office. School IPM outreach materials developed by the grantee should also be contributed to the EPA's Center of Expertise

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for School IPM and iSchoolPest Manager website. For more information about EPA's School IPM program and available resources, visit https://www.epa.gov/managing-pests-schools.

Enforcement Considerations

None.

L. SPRAY DRIFT

In 2014, EPA initiated the voluntary Drift Reduction Technology (DRT) Program to encourage the identification and use of pesticide spray application technologies verified to substantially reduce spray drift. Such technologies may include spray nozzles, shrouds and shields and drift-reducing adjuvant chemicals used for aerial or ground boom applications to row and field crops. OPP will encourage manufacturers to test their technologies to verify and quantify drift reduction potential, and OPP will encourage registrants to label their agricultural pesticides for application with these technologies. As a result of this program, OPP expects to see an increased adoption of drift reduction technologies on pesticide labels and by pesticide applicators.

Goal

Reduce spray drift incidents by increasing awareness and adoption of spray drift reduction techniques and technologies. The Drift Reduction Technology (DRT) Program supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

Program Description

Grantees that select this program area should conduct education and outreach activities that increase awareness and promote adoption of spray drift reduction techniques and technologies.

Additionally, grantees should gather agricultural spray drift incident data from the past 2-3 years to form an incident baseline and then gather additional incident data during the grant period. This agricultural spray drift incident data, collected over time, can help the EPA the effectiveness of DRT Program. The key parameter to collect is number of incidents investigated by the grantee related to spray drift of agricultural pesticides. More detailed information includes:

- State or tribe where the incident occurred;
- Aerial or ground application;
- Wind speed at time of application;
- Release height at time of application;
- DRT equipment used, and identification of the technology used;
- Indication the DRT was used improperly;
- Droplet size at time of application;
- Weather conditions at time of application including humidity, temperature, and inversion conditions if applicable;
- Pesticide product(s) used;
- Target site (e.g., row/field crop or orchard), and drift site (e.g., home, school, crop, wetland);
- The distance from the target site to the site where effects were observed;
- Observed effects;

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- Determination of how likely is it that drift, and not volatilization or wind-blown soil particles, was the cause of the exposure; (Not likely, likely, very likely or unknown); and
- Determination of any symptomatic human cases involved; was the state Department of Health or regional project officer contacted?

In addition, it would be helpful to indicate if the spray drift incident investigated was a concern due to smell, seeing the application, or a result of adverse health effects.

Enforcement Considerations

Grantees should investigate alleged incidents of spray drift and take appropriate enforcement action. Grantees should also provide information on the actions taken as a result of their investigations as part of their end-of-year report. If there were adverse health effects, document the symptoms as well as the number of cases, and who was affected such as field workers, residents or bystanders. Finally, enforcement actions should also be documented (e.g., no action, notice of warning, civil penalty, criminal penalty).

Reporting Requirements

The data as described above will help inform the EPA and states/tribes about the success of the new DRT program and provide ideas for making further improvements to reduce spray drift incidents. This information should be reported annually in a separate file attached to the end-of-year report.

M. STATE AND TRIBAL COORDINATION AND COMMUNICATION

It is a goal of the Tribal Pesticide Program Council (TPPC) to encourage tribes, where appropriate and feasible, to increase their communications and coordination with state pesticide programs as a resource to build capacity for tribal pesticide programs.

Increased coordination can be low-cost and low effort, and can reap many benefits for tribes and states while still respecting tribal sovereignty and jurisdiction. It can improve tribal access to programmatic and technical expertise, support and training. It can also provide states with greater assurance of adequate pesticide program protection in Indian country within or contiguous to their borders and resources.

Goal

Where appropriate, support tribal pesticide program capacity building and efficient use of resources by improving communication and cooperation between tribes and states to advance pesticide program implementation and increase program efficiencies. Efforts to build tribal pesticide program capacity through this approach supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws. This priority can also support the Agency's tribal and environmental justice goals, including the Administrator's commitment to enhance state, tribal and local partnerships. This approach is also consistent with Principle #6 of the agency's 1984 Indian Policy which can be viewed online at: https://www.epa.gov/tribal/epa-policy-administration-environmental-programs-indian-reservations-1984-indian-policy .

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Program Description

Grantees selecting this program area will work with tribes within their borders to strengthen relationships, increase understanding and respect of jurisdictional issues, and identify areas for capacity building. All efforts and approaches must support and respect tribal sovereignty and jurisdiction. Examples of areas where state pesticide programs may be able to offer low-cost support to tribal pesticide programs, or vice-versa, include:

- Involving state and tribal staff and managers in FIFRA-related training as appropriate in an effort to share expertise and understanding;
- Sharing tools, templates, checklists or databases between states and tribes;
- Having states routinely inform tribes when they issue a FIFRA Section 24(c) or request a FIFRA Section 18 from the EPA;
- Sharing pesticide monitoring data; and
- Establishing state and tribal technical and program expert contacts for pesticide personnel.

Enforcement Considerations

Examples of areas where state pesticide enforcement programs may be able to offer low-cost support to tribal pesticide enforcement programs, or vice-versa, include:

- When training FIFRA inspectors, involve state and tribal inspectors in the training as appropriate in an effort to share expertise and understanding;
- Offer tribes an opportunity to ride along with state pesticide inspectors, and vice versa, for training purposes;
- Share information between states and tribes on tips, complaints, violators, and/or incidents that may be relevant in or near Indian country;
- Provide lab support to tribes; and
- Work with tribes to identify establishments within tribal boundaries.

This approach does not authorize state compliance assurance or enforcement in Indian Country.

N. EMERGING PUBLIC HEALTH PESTICIDE ISSUES

This program area recognizes that there may be local public health concerns that will require grantees to focus their resources to address public health crises involving insects or microbial pests such as Zika, Lyme Disease and West Nile Virus. Public health leaders will need to turn to the EPA to provide current, accurate, and specific information about pesticides, including antimicrobials, and pest control practices. By carefully targeting technology, information, and process improvements, the EPA headquarters and regional offices can be more agile, using fewer resources to react more rapidly and efficiently to our local, state, tribal, and federal public health partners.

Goal

The goal of this program area is to protect human heath while addressing an emerging public health concern. This program area supports the Agency's Strategic Plan, to ensure the safety of chemicals, prevent pollution, and enforce environmental laws.

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Program Description

Grantees selecting this program area will need to provide training and information on pesticides and IPM approaches specifically designed to respond to the public's concerns, and the needs of the public health agencies to effectively address emergencies. Grantees will first identify the best approach for their pesticide program based on the type of emerging public health issue and the related pesticide needs. Once this has been identified, grantees will need to:

- Conduct outreach and education to affected communities on methods to minimize pesticide risk while protecting human health;
- Coordinate with EPA regions and OPP on pesticide issues related to human health, including section 18 and 24(c) requests;
- Coordinate with all federal, state and local agencies on activities needed to protect human health from pesticide risk;
- Identify ways to minimize environmental and non-target risks from public health pesticide applications. Promote IPM methods to minimize pesticide applications; and
- Provide other negotiated activities as appropriate.

This program area will require close coordination between EPA project officers and their grantees. The regional project officer will need to notify OPP and OECA of the public health concern to make sure it meets the intent of this program area.

Enforcement Considerations

Respond to clearly identified public health pesticide issues by providing compliance monitoring and enforcement as needed. Monitor the sale/distribution of pesticidal products and devices that claim to control public health pests, and take appropriate enforcement, or refer to the Region, against those products which are unregistered or making false claims. Closely monitor FIFRA Section 25(b) products that have public health claims.

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APPENDIX 2:
FIFRA WORK PLAN-REPORT TEMPLATE DESCRIPTION AND LINKS

FIFRA Work Plan-Report Template

EPA developed a FIFRA Cooperative Agreement Work Plan-Report Template ("FIFRA template") for work plans and reports for cooperative agreements awarded under this Guidance. Mandatory use of the FIFRA template began for all FIFRA grantees in FY17, and continues as a requirement today. Both grantees and regions must submit their reports as an Excel file and not a PDF. This will allow regions to complete their portion of the template, and OPP and OECA offices to tabulate the reported information.

The FIFRA template, which is an Excel spreadsheet, was developed by EPA with extensive input and a considerable amount of support from states with the goal of significantly reducing the administrative burden associated with work plan development and accomplishment reporting for both the grantee and EPA regional personnel. The FIFRA template also promotes clarity in work plan expectations and end-of-year results, makes work plans and reports more consistent throughout the country, and facilitates compilation and review of national year-end data.

The FIFRA template incorporates proposed work activities from the national FIFRA cooperative agreement Guidance, provides space for proposed and negotiated grantee work activities, space for grantee progress reports on negotiated work, and space for EPA comments and recommendations as part of the grantee evaluation by EPA regional project officers. It also allows for additional narrative information to be attached. The FIFRA template contains all forms needed for annual reporting, and allows additional data files to be attached. The FIFRA template can be accessed online at: https://www.epa.gov/compliance/federal-insecticide-fungicide-and-rodenticide-act-state-and-tribal-assistance-grant

The FIFRA template does not change the type of information reported or the processes used by regional offices and grantees in submitting cooperative agreement applications, negotiating work plan commitments, and reporting on the progress of those commitments. This template is not intended to change the normal workflow process between the grantee and the EPA project officer.

FIFRA Work Plan-Report Instructions

With any new tool, there will be a period of learning and adjustment. This instruction manual focuses solely on explaining how to use the FIFRA template within the Excel environment. The link for the manual is: https://www.epa.gov/compliance/federal-insecticide-fungicide-and-rodenticide-act-state-and-tribal-assistance-grant

Software Needs

The FIFRA template was designed using Microsoft Office's Excel 2007, and should run on any newer version of Excel as well.

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APPENDIX 3:
STATE PRIMACY UNDER FIFRA AND EPA OVERSIGHT QUESTIONS AND ANSWERS

Q 1 What does primacy mean under FIFRA and how does it relate to program oversight?

FIFRA provides that states, which have met certain criteria, shall be granted primary enforcement responsibility for pesticide use violations. Specifically, Section 26 (a) reads:

> *"In General. For the purposes of this Act, a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State –*
>
> *(1) Has adopted adequate pesticide use laws and regulations, except that the Administrator may not require a State to have pesticide use laws that are more stringent than this Act;*
> *(2) Has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations; and*
> *(3) Will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation."*

Section 26 (b) continues on to explain how primacy may also be obtained through a cooperative agreement with the Agency or if the state has an approved Section 11 certification plan that meets the criteria set forth in section 26(a).

While these three mechanisms for obtaining primacy represent differing paths, the underlying criteria that need to be met to obtain and retain primacy are essentially the same.

The EPA published its Final Interpretive Rule in the Federal Register on January 5, 1983, (48 FR 404 – 411) for state primary enforcement responsibilities under FIFRA. This interpretive rule indicates that states with FIFRA primacy will be the entities with primary enforcement responsibility for pesticide use violations. EPA will refer any significant reports of pesticide misuse to the states for follow-up. While EPA retains the authority to conduct pesticide use/misuse inspections and enforce against pesticide misuse, EPA will defer conducting pesticide use/misuse inspections or enforcement proceedings for pesticide misuse to states with primacy unless the state fails to meet specific criteria described in the interpretive rule, or the state requests or defers the inspection or enforcement to EPA.

EPA's oversight of state programs does not end once a state has primacy. Primacy is the basis of a continuous relationship between the state and EPA for successful implementation of FIFRA. This requires EPA to provide ongoing review of state programs to assure that states maintain an adequate pesticide regulatory program. This requirement is reflected in the language from section 26, such as "during any period", "adopted and is implementing" and "will keep such records and make such reports showing compliance with paragraphs (1) and (2)". Expectations regarding the level and types of ongoing or continuing program oversight activities do not differ between the various mechanisms to obtain primacy.

Section 27 (b) and 40 CFR 173 each discuss that the Agency may rescind primary enforcement authority in whole or in part when it determines that a state is not carrying out such responsibility. This language further

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conveys the intent that the Agency must provide ongoing evaluations of state programs on which to base any such determination.

The expectation and importance of ongoing EPA evaluations to assure state program adequacy has been re-emphasized via various GAO and/or OIG reports. The most recent and notable review of EPA oversight of state enforcement programs (https://www.epa.gov/office-inspector-general/report-epa-must-improve-oversight-state-enforcement) was critical of EPA's oversight of state air, RCRA, and water programs. While this report focused solely on the air, water, and RCRA programs, its findings are important considerations for all EPA programs. Over time, all programs, including various aspects of the pesticide program, have been and will continue to be, subject to various levels of review by the GAO and/or the OIG. EPA's ongoing reviews to assess program adequacy are critical to assuring both state and national programs are viewed as credible, transparent, and effective. In the current budget environment, where programs viewed as non- or under- performing may be subject to additional reductions in resources, the imperative for states and regions to work together to assure each of our programs continue to meet these obligations is even more important.

The framework established in FIFRA for pesticide regulation gives primacy to states, and provides for oversight by EPA, requiring both parties to work together for effective pesticide regulation to occur. Communication and cooperation are essential to success. If communication is incomplete or irregular, or cooperation does not happen, pesticide regulatory programs will not perform well at either the state or federal level.

Q 2. What should I expect from EPA in terms of program oversight? What are the types of items that will be looked at regarding primacy and the cooperative agreement?

EPA reviews of state FIFRA programs are required to be undertaken for the following purposes:

1. Program Reviews.
   Verifying that the state program continues to meet the requirements for maintaining primacy; identifying areas of concern that represent potential problems for maintaining primacy; and offering suggestions to address problem areas.

2. Grant Reviews.
   Assuring that federal funds are managed appropriately to accomplish the goals of the grant; that activities/products meet expectations relative to the scope, numbers, and/or quality as described in the work plan; and identification of assistance needed to meet these goals.

While not required under either review, EPA may use those processes to identify shared opportunities to improve program implementation or ways to work together to improve pesticide regulation.

The oversight activities of grant reviews and program reviews can intersect and often the reviews occur at the same time. The Interpretive Rule and 40 CFR 173 discuss EPA's criteria for assessing the need for the rescission of primacy under Section 27(b) of FIFRA. The Interpretive Rule states that "in deciding whether a State is not carrying out, or cannot carry out its use enforcement responsibilities, the Administrator will apply the criteria for an adequate program set forth in Unit II to the performance of the State during the time the State had primacy." These criteria are what EPA will examine as a part of its obligations to assure the implementation of state programs continue to meet the requirements for primacy. The criteria include:

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1. Adequate laws and regulations. To be considered "adequate," a state's legislation must address at least the following areas:
   a. Same use prohibitions as contained in FIFRA (FIFRA 12(a)(2)(G), 12(a)(2)(H), 12(a)(2)(P) and 12(a)(2)(F));
   b. Authority to enter premises or facilities to inspect and collect samples; and
   c. Flexible array of enforcement remedies suitable to the gravity of a violation.
   d. In addition to the initial determinations required to obtain primacy, ongoing reviews will evaluate any changes to laws and regulations to assure these do not adversely impact a state's ability to implement a program consistent with FIFRA.

2. Adequate procedures for enforcing the laws. The Agency will examine the efficacy of procedures adopted by the state to implement its pesticide laws and the state's adherence to these procedures. This may include reviews of SOPs, tracking systems, etc., but as reflected in the Interpretive Rule on pages 409-410, the Agency will be particularly interested in the remedies the state has actually applied to various use violations. This aspect of the review will be used to determine whether there is sufficient correlation between the gravity of a use violation and the severity of the enforcement response to assure that the state's arsenal of remedies is being applied in a flexible yet effective manner. More specifically, and as more thoroughly discussed in the Interpretive Rule, this examination of procedures will include an evaluation of the following:

   a. State training programs for state enforcement personnel;
   b. Sampling techniques and laboratory capabilities;
   c. Complaint processing to assure timely response;
   d. Compliance monitoring and enforcement; and
   e. State education programs to determine if the programs are informing its constituencies of applicable pesticide use restrictions and responsibilities and promoting voluntary compliance.

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APPENDIX 4:

ENFORCEMENT PRIORITY SETTING GUIDANCE

An effective priority-setting process will enable grantees 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.

A priority-setting plan can either be addressed in the work plan or attached as a separate document. Once it is approved by EPA, grantees need not submit 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 an updated list of priorities annually. However, the plan must be revised every 5 years.

I. CONTENT

The priorities to be addressed by the grantee must include the National Enforcement Priorities. Grantees must evaluate these priorities as part of their own priority-setting process and assign resources to them according to their ranking in their overall priority-setting scheme. The 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 enforcement and compliance 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).

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 and the environment*: grantees 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, grantees should use the National FIFRA Enforcement Response Policy which can be found on EPA's website at: http://www2.epa.gov/sites/production/files/documents/fifra-erp1209.pdf and the FIFRA Worker Protection Standard Penalty Policy at: http://www2.epa.gov/sites/production/files/documents/fifrawps.pdf. It is important to factor in the degree of harm associated with the violation, even if there are 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.

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B. *Identification of violations:* For new priority-setting submissions, grantees will be expected to submit information on the types of violations and where violations are occurring. Once this information is systematically evaluated, grantees 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, grantees should use the full range of violations data currently at their disposal. Specifically, grantees should consider what if any, recommendations they should make with regard to needed changes in the certification and training programs to follow-up 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. The method chosen to measure economic loss must be explained in the priority-setting plan.

E. *Environmental indicators such as relevant ecological studies (optional):* 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 (optional):* 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 criterion 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.

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 be used in prioritizing follow-up to tips and complaints, using primarily criteria A and B as the determining factors. (Follow-up to tips, complaints and referrals could be listed as a priority.)

II. FORMAT

The priority setting plan can either be included in the grantee's work plan or as an attachment. It should include the fiscal years the plan covers and information on the priority areas. For each priority area, provide the information sources (i.e. a review of violations data, toxicity data, tips and complaints, etc.) that were used in establishing priorities. Discuss why the area was identified as a priority. As an example, there was a high degree of actual or potential harm to human health or the environment or both.

Identify the number of inspections to be conducted to follow-up on this priority area. Also state under which categories (e.g., agricultural 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 follow-up to a given priority area.

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APPENDIX 5:

COMMPLIANCE MONITORING STRATEGY

For the
Federal Insecticide, Fungicide, and Rodenticide Act
(FIFRA)

2015

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I. PURPOSE AND BACKGROUND

A. Introduction

EPA works with its federal, state, territorial, and tribal regulatory partners to implement and assure compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to protect human health and the environment. The Office of Enforcement and Compliance Assurance (OECA) mission under FIFRA is to ensure that the environmental and public health protections provided by our nation's environmental pesticide laws are realized through activities to monitor compliance, civil and administrative enforcement to address noncompliance, and criminal enforcement actions when necessary. The ten regional offices carry out EPA's programs and negotiate and oversee cooperative agreements with the states, territories, and tribes for the implementation and enforcement of FIFRA.

The primary goals of FIFRA compliance monitoring include:

- Targeting compliance monitoring activities in accordance with priorities;
- Providing a visible field presence that will encourage compliance and deter noncompliance;
- Assessing and documenting compliance with FIFRA, the implementing regulations, pesticide labels and pesticide registrations;
- Identifying problem areas requiring resolution through regulatory actions by the Office of Pesticide Programs (OPP);
- Collecting evidence to document and support enforcement actions; and
- Monitoring compliance with enforcement orders.

Generally, states[2] and tribes conduct pesticide use monitoring and enforcement, certify and license commercial pesticide applicators, certify private pesticide applicators who use restricted use pesticides (RUPs) and conduct marketplace and pesticide producing establishment inspections on behalf of EPA to assure label and product integrity. Which states and tribes conduct these activities, and the extent of activity, will vary depending upon who has obtained primacy (explained below), the applicability of FIFRA provisions to the states and tribes as well as specific obligations set forth in negotiated agreements. Through State and Tribal Assistance Grants (STAG), there is a working partnership among EPA, states, and tribes to cooperatively enforce federal, state, and tribal pesticide laws and regulations. The success of this national pesticide program is dependent upon good communication and cooperation among all partners.

[2] Hereafter, references to "states" includes territories, as well.

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B. Purpose of CMS

This Compliance Monitoring Strategy (CMS) works in conjunction with the OECA National Program Manager Guidance (NPMG) and the FIFRA Cooperative Agreement Guidance (CAG) to provide national pesticide enforcement program expectations to EPA regions, states, and tribes.

This CMS provides a multi-year framework and national guidance for the FIFRA compliance assurance program to achieve the goals of FIFRA compliance monitoring and enforcement. Specifically, this CMS is intended to:

- Promote an understanding of, and compliance with, minimum program requirements;
- Promote national consistency in program implementation while acknowledging and allowing appropriate flexibility;
- Provide a strategy for setting priorities that focus on the greatest risks to health and the environment;
- Articulate guiding principles of the strategic approach to help EPA headquarters, regions, states, and tribes allocate resources across the FIFRA compliance assurance program;
- Provide inspection frequency goals;
- Clarify the intersections of compliance monitoring for the ongoing FIFRA core program, the national areas of focus, and state or tribal priorities;
- Enhance the use of data collected for priority setting and inspection targeting; and
- Clarify requirements for reporting national program results.

It is increasingly challenging to monitor compliance and maintain adequate enforcement response capabilities in the face of a regulated community that continues to grow in size and complexity (See, Appendix – Universe of the FIFRA Regulated Community). While still important, our traditional approach of conducting on-site inspections and pursuing enforcement cannot keep up with expanding responsibilities. It is imperative that compliance monitoring and enforcement agencies be flexible and creative in designing approaches to identify and address violations that pose risk to human health and the environment while maximizing available resources. Therefore, EPA is expanding the range of compliance monitoring activities, promoting the use of advanced monitoring and electronic reporting, expanding transparency and sharing of data, and using innovative enforcement approaches to increase compliance with environmental requirements as part of its "Next Generation Compliance" efforts. Next Generation Compliance promotes electronic reporting, advanced monitoring, and transparency to allow the public greater access to pollution and compliance information.

C. Background

FIFRA was enacted originally as the Federal Insecticide Act in 1910 as a pesticide licensing act. In 1947, Congress broadened the federal government's control of pesticides by passing the original Federal Insecticide, Fungicide, and Rodenticide Act. FIFRA required the Department of Agriculture to register all pesticides prior to their introduction in interstate commerce. In 1964, amendments to FIFRA authorized the Secretary of Agriculture to refuse registration to pesticides that were unsafe or ineffective and to remove them from the market. In 1970, Congress transferred the administration of FIFRA to EPA. This was the initiation of a shift in the focus of federal policy

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from the control of pesticides for reasonably safe use in agricultural production to control of pesticides for reduction of unreasonable risks to human health and the environment.

This new policy focus was expanded by the passage of the Federal Environmental Pesticide Control Act of 1972 (FEPCA), which amended FIFRA by specifying methods and standards of control in greater detail. Also in 1972, Congress amended FIFRA to provide a mechanism to delegate enforcement responsibilities to states by providing for federal/state cooperative programs. In 1978, Congress further strengthened the responsibility of the states by granting states primary use enforcement authority under certain circumstances. Subsequent amendments have clarified the duties and responsibilities of EPA. In general, the emphasis has shifted from pesticide efficacy issues to minimizing risks associated with toxicity and environmental degradation.

D. Primacy

Section 26 of FIFRA sets forth the conditions for state primary enforcement responsibility (primacy) for pesticide use violations. Section 26 provides for primacy under certain criteria that differ from relationships states or tribes have with EPA in other programs. Section 27 of FIFRA authorizes the Administrator to override or rescind primacy in certain situations. Currently, all states have primacy with the exception of Wyoming. EPA provides oversight to ensure the adequacy of the overall state program and an equal level of protection of human health across the country. In addition, a state may, at any time, request EPA to act upon a pesticide misuse violation utilizing the remedies available under FIFRA.[3]

EPA issued two Federal Register notices governing how the Agency oversees the states with respect to primacy and rescission of primacy: FIFRA State Primacy Enforcement Responsibilities: Final Interpretive Rule, and Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations. Within the parameters of Sections 26 and 27 of FIFRA, the interpretive rule on primacy, and the rule on the procedures governing rescission, EPA may conduct compliance monitoring inspections and initiate enforcement actions for pesticide use violations.

FIFRA does not authorize tribes to be granted primacy. Some tribes participate in the federal FIFRA enforcement program by receiving a pesticide enforcement grant to conduct inspections utilizing EPA inspection credentials. Tribes refer enforcement cases to the EPA regional office; although, a few tribes take enforcement action using their tribal pesticide codes.

[3]FIFRA State Primacy Enforcement Responsibilities: Final Interpretive Rule. 48 Fed. Reg.407, (Jan. 5, 1983).

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II. FIFRA INSPECTIONS

A. *Federal Inspector Credentials and Training*

Inspections to assess compliance with FIFRA regulations must be conducted utilizing EPA credentials and FIFRA inspection authority. All grantees must have at least one inspector with EPA credentials. To be issued EPA inspector credentials, EPA, state, and tribal inspectors must comply with EPA Orders 3500.1 and 1440.2. EPA Order 3500.1 requires, among other things, media specific training requirements and specific training on emerging topics. EPA Order 3500.1 also specifies requirements for supervisors of EPA and state inspectors with EPA credentials. EPA Order 1440.2 provides requirements for health and safety training for inspectors before they can be issued and use EPA credentials.

The Pesticide Inspector Residential Training (PIRT) program trains state and tribal pesticide regulatory inspectors and their supervisors. Objectives of the PIRT program include:

- Providing information on new regulations, technologies and tools to improve the effectiveness and efficiency of all pesticide inspections.
- Training a core group that can train others ("train the trainer").
- Providing feedback that would offer important information that can be used in future updates of inspection procedures and protocols.
- Networking that would allow for the exchange of information regarding routine or unique inspections.
- Providing a forum for discussion of inspection protocol improvements and "lessons learned."
- Sharing valuable field information on emerging issues.

The Pesticide Regulatory Education Program (PREP) trains managers, supervisors, and senior staff of state and tribal agencies who are responsible for FIFRA regulatory programs. The program is governed by a Steering Committee that decides the annual themes of the courses, based on the most pressing needs of the states. The objective of the program is to provide training on all aspects of the pesticide program and improve consistency and efficiency in the national program as a whole. Course themes include topics on core work, as well as new regulatory/enforcement initiatives, and emerging issues in science and technology. A major benefit of the program since its inception in 1990 has been the networking and exchange of information among the states, tribes, and EPA.

B. *Inspections*

Inspections conducted under FIFRA authority must be consistent with EPA's FIFRA Inspection Manual.

To conduct an inspection, the inspector needs the *informed consent* to enter from the owner of the property or from a person in control of the property in the absence of the owner, such as an

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operator or agent-in-charge. If consent is denied and a warrant is necessary, the request for a warrant can be based on "probable cause" or a "neutral administrative inspection scheme." "Probable cause" is a reasonable suspicion that a violation has occurred or is occurring and is commonly referred to as a "for-cause" inspection. EPA conducts inspections pursuant to a neutral inspection scheme when it is not doing "for cause" inspections. A neutral inspection scheme allows for a non-arbitrary method of identifying inspection targets and the neutral selection of establishments for inspection.

1. For-cause Inspections

Under FIFRA, a for-cause inspection is initiated as a follow-up to an on-going investigation or in response to a tip or complaint, damage report, or referral of a known or suspected violation. Due to the potential for harm to human health and the environment, it is important that a "for-cause" inspection be initiated as soon as possible after receiving information of a suspected violation of FIFRA or state law.

2. Neutral Scheme Inspections

A neutral scheme inspection monitors compliance based on a set of criteria rather than based on information that a violation has occurred or is occurring. The plan must be neutral, and applied in a neutral manner to the particular establishment. To establish the requisite neutrality, the plan can rely on random selection, or selection by relevant statistics that have no individual human component. The statistics cannot have an individual human component because this would impermissibly allow a subjective input into the equation. An inspection cannot be the product of an agency's arbitrary decision. This CMS, in conjunction with the NPMG and the FIFRA Cooperative Agreement Guidance, constitutes a critical part of the neutral scheme inspection plan for FIFRA. See Chapter V for information on targeting neutral scheme inspections.

C. Specific Types of FIFRA Inspections

1. 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. There are a variety of activities that are conducted during a PEI inspection, including, but not limited to, the examination of products, product labels, refillable and non-refillable containers, containment and records to determine compliance with statutory and regulatory requirements.

2. Import Inspections

An import inspection is an inspection of a pesticide product being imported into the United States to determine whether the product is in compliance with FIFRA. Inspections of imported pesticide products can be conducted at the U.S. Customs and Border Protection central examination sites located in designated ports or Customs bonded warehouses associated with the ports. Some import inspections may also be conducted post-entry at a designated destination facility, as indicated on the imported product's entry documents. When EPA, state, or tribal credentialed inspectors conduct an import inspection, it is initiated at the request of the EPA regional office.

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3. Use Inspections

A use inspection is an observation of an actual pesticide application or an inspection following an application. Use inspections include the many facets of pesticide use, including storing, handling, mixing, loading, and disposal. Pre- and post- application activities are appropriate for inspection. Use inspections should be used to determine label comprehension and directions for use compliance by applicators. Use inspections can also detect non-compliant labels in the channels of trade or being used by consumers. An experimental use permit (EUP) inspection is conducted to determine compliance with an experimental use permit and may be an actual observation of an application or an inspection of records.

Use inspections are generally classified as agricultural or non-agricultural:

- Agricultural inspections include the inspection of pesticide applications in conjunction with the production of agricultural commodities. Agricultural commodities are defined in 40 CFR section 171.2(a)(5) as, "[a]ny 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." Worker Protection Standard (WPS) inspections are a type of agricultural inspection conducted to monitor compliance with the WPS requirements.
- Non-agricultural inspections include the inspection of non-agricultural pesticide applications such as pest control in industrial or residential settings.

4. Certified Applicator Inspections

The purpose of the certified applicator inspection is to determine if the applicator is properly certified and/or licensed and whether the required records are being maintained. Additionally, to the extent it is possible through a record review, the inspector will determine whether the applicator is applying pesticides only in those areas for which certification has been issued; and whether the records indicate that all applications have been made in compliance with all applicable laws and regulations.

5. Restricted-Use Pesticide Dealer 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.

6. Marketplace Inspections

A marketplace inspection is conducted at the retail, distribution, wholesale, or user level for the purpose of determining product registration status, proper storage and display, any labelling violations, any product decomposition, and for collecting official samples.

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7. Good Laboratory Practice (GLP) Inspections and Data Audits

GLP inspections and data audits focus on compliance with GLP regulations and the quality and integrity of test data submitted to EPA by a registrant to ensure compliance with the FIFRA requirements. A GLP inspection and data audit is the process by which EPA verifies that the data from a completed study is consistent with the final report that was submitted to the Agency. This is accomplished by documenting GLP practices and by examining raw data and other records generated during a study and comparing them with results provided in the study report. GLP inspections and data audits are conducted by EPA inspectors under a separate compliance monitoring strategy.

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III. COMPLIANCE MONITORING

A. Background

Historically, EPA has relied upon on-site inspections as the primary activity to monitor compliance with FIFRA. This CMS, however, suggests the consideration of a wider range of activities to provide EPA, states and tribes with increased flexibility to monitor compliance and reach more regulated entities effectively and efficiently. Compliance monitoring activities that are part of a Cooperative Agreement must be documented in the state or tribe's cooperative agreement work plan and reported to the relevant EPA data system to ensure transparency, accountability, and appropriate follow-up.

To qualify as a compliance monitoring activity:

- The activity must be conducted for the purpose of making compliance determinations;
- "On-site activities" must be conducted by an authorized inspector (consistent with appropriate federal, state, or tribal authority);
- "Off-site activities" must be conducted by an authorized inspector (consistent with appropriate federal, state or tribal authority) or other EPA, state or tribal representative with sufficient knowledge, training, or experience to conduct the activity.

Compliance monitoring does *not* include:

- Compliance assistance[4];
- Compliance incentives, such as Compliance Assistance Program (CAP) initiatives; or
- Case Development and Enforcement (e.g., preparing notices of violation, warning letters, or formal complaints; or developing evidence where an area of concern or potential violation has been identified).

B. On-site Compliance Monitoring Activities

On-site activities may include inspections designed to assess compliance of the establishment as a whole, or inspections targeted to focus on a specific pesticide product, pesticide, or regulatory requirement. During an inspection, an inspector may conduct the following activities:

- Make observations, take notes and pictures;
- Gather information from witnesses or establishment representatives;
- Review records, including establishment records, dealer records as well as applicator license and records;

[4] Agency policy limits the extent to which an inspector may provide compliance assistance in connection with an inspection. See *National Policy: Role of the EPA Inspector in Providing Compliance Assistance During Inspections* (June 25, 2003), http://kodiak.r07.epa.gov/intranet/enviroprograms/role_of_inspector.pdf.

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- Collect samples of pesticide products;
- Collect residue and environmental samples;
- Use advanced monitoring technologies, when available, at sites of suspected pesticide drift.

C. Off-Site Compliance Monitoring Activities

Off-site activities may include compliance evaluations designed to assess compliance of the establishment as a whole, but generally will be targeted to focus on only a portion of an establishment, such as a specific process, pollutant, or regulatory requirement. Off-site evaluations may include any of the following activities:

- Review of establishment reports or other documents, such as annual production reports required by FIFRA Section 7 or notifications under FIFRA Section 6(a)(a);
- Review of agency-gathered testing, sampling and monitoring data, such as results of formulation and efficacy analysis of samples of anti-microbial pesticides;
- Review of relevant process and inventory information, such as records documenting a registrant's implementation of a pesticide recall plan;
- Review of records produced under FIFRA Section 8; and

D. Other Activities

Regions, state and tribes may conduct other activities that are not compliance monitoring activities but which may create a FIFRA compliance presence in the regulated community which encourages and facilitates compliance, although these other activities are not considered compliance monitoring. For example, the region may:

- Employ integrated strategies that include compliance assistance and compliance incentives *in combination* with traditional inspection and enforcement approaches.
- Partner with OPP to *combine* outreach with compliance and enforcement, particularly in specific requirements, geographic areas/watersheds and/or vulnerable populations.
- Employ ambient environmental screening using advanced monitoring technologies for a group of facilities or geographic area of interest for use in subsequent compliance evaluations and determinations, such as analysis of pesticides in vulnerable watersheds.; and
- Review company website wherein internet sites are examined for potential FIFRA violations.

If EPA regions, states, or tribes have other ideas of additional compliance monitoring activities they are encouraged share them with OECA.

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IV. INSPECTION FREQUENCIES

Inspection frequencies are intended to help EPA, the states and tribes to understand and meet today's challenges by providing benchmarks that set aspirational compliance monitoring goals. The frequencies presume adequate funding and resources and, therefore, the actual number of inspections conducted may differ from the frequencies set forth below.

At this time, inspection frequencies are not being offered for Marketplace, Certified Applicator, Use and WPS inspections. The size of those regulated communities coupled with clear regional/state differences, make one, standard inspection frequency challenging for these inspection types without further delineation. *Strategic targeting is particularly important where an inspection frequency is not proposed to ensure the greatest possible deterrent effect.* For example, a strategic plan may focus on key times of the growing cycle, the applicator type (i.e. aerial), a particular pesticide or a certain geography. The relative size of a particular sector of the regulated community may also be considered. States should consider how to balance inspections and potential risk in developing a plan for these inspection types. For the WPS program, critical to the protection of human health, EPA will work with states to develop criteria and expectations to guide the WPS inspection program.

Actual annual program commitments for ALL inspection types are negotiated as part of the cooperative agreement process or are subject to the annual commitment system process. Individual regional, state and tribal circumstances, including resource and workload issues, are addressed during those processes. The inspection frequencies listed below are goals for an important subset of all FIFRA inspections, and can serve as a starting point for cooperative agreement negotiations, knowing that there needs to be flexibility to adapt to particular situations, as necessary. Cooperative agreement negotiations address the unique mix of regulated entities and pesticide issues in particular states or tribes.

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Type of Inspection	Proposed Inspection Frequency	Approximate Size of Regulated Community	# of Inspections Needed Nationally to Meet Frequency/Year
PEI	All at least once every 5 years	14,000	2,800
Imports	2% of all annually	24,000 NOAs	480
EUP	All annually	760	760
RUP Dealers	All at least once every 5 years	Exact # Unknown. Some states maintain data; ex. 1412 in Iowa. Assume approximately 50,000.	10,000
Marketplace*	No inspection frequency at this time but must be part of a balanced state inspection plan.	Large. Everywhere pesticides are sold. Retail, wholesale, etc.	
Certified Applicators*	No inspection frequency at this time but must be part of a balanced state inspection plan.	900,000	
Use *	No inspection frequency at this time but must be part of a balanced state inspection plan.	Large; Everywhere pesticides are used;	
WPS*	No inspection frequency at this time but must be part of a balanced state inspection plan.	Large; Every farm/nursery that hires farmworkers.	

* No inspection frequency is listed at *this* time but may be offered in the future.

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V. PRIORITY SETTING AND TARGETING

Priority setting, targeting and commitments are part of a dialog between EPA, states and tribes. This dialog is the foundation of cooperative agreement negotiations. Decisions made as to priorities, targets and commitments should be reflected in cooperative agreement work plans. As part of that process, regions need to assess their own resource levels in relation to each state and tribe's identified priorities, targets and commitments. Work plans should be made available to OECA, upon request, to provide a picture of compliance monitoring activities in a given year.

A. Priority Setting

The goal of priority setting is to focus compliance monitoring efforts on program areas with the greatest need first. Consistent with the NPMG and the FIFRA Cooperative Agreement Guidance, priorities should be based on risk to human health and the environment. Regions, states and tribes should use the criteria listed below to determine risk-based priority setting. Once the greatest needs are identified, a holistic compliance monitoring strategy must be developed that addresses priorities but also provides an overall deterrent effect for the FIFRA program as a whole.

1. Priority Setting Criteria

Risk-based prioritization should reflect the following criteria:

a. Potential harm to human health or the environment.

Take into account the degree of harm to human health or the environment, whether actual or potential, when setting priorities. Factors to consider are the toxicity of the pesticide, whether it is a restricted use pesticide (RUP), the amount of the pesticide used, the occurrence and use patterns, and the potential impact on health or the environment if misuse occurs. Pesticide risks can be ranked by their relative contribution to harm that may result from pesticide use or misuse. Reducing chemical risks and protecting underserved and vulnerable populations is of particular concern; in particular, the disparate exposure in environmental justice communities and the likelihood of exposure to children and workers. Consideration of newly implemented regulatory requirements is also part of this criteria.

b. Types and number of violations that occur.

The types and number of violations is an indicator of the level of compliance with formulation and labeling requirements. It provides real-time information about regulatory issues that need to be addressed. The criteria used to evaluate violations include: violations that resulted in injury to humans, animals or the environment; facilities or users with major violations as determined by the FIFRA Enforcement Response Policy; and facilities or users with multiple violations, repeat violations, patterns of violations, violations involving highly toxic pesticides or violations that

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caused economic harm. Pesticides may be ranked by their relative contribution to use or product related violations.

c. Health and environmental indicators.

The analysis should consider relevant ecological and health studies when available. For example, a groundwater survey may reveal high levels of contamination from pesticides used in center-pivot systems. A health survey may reveal unacceptable levels of pesticide exposure.

2. Maintaining a Deterrent Effect

EPA, states, and tribes can provide a deterrent effect by maintaining a visible presence in the FIFRA regulated community as a whole. Core areas for deterrence purposes include:

- Producer establishment inspections (PEIs);
- Dealer, distributor, and retailer inspections;
- Worker Protection Standard;
- Use and misuse;
- Cancellations, suspensions, other major regulatory actions, recalls, and national high risk initiatives;
- Imports;
- Exports;
- Section 18, Section 24(c), and experimental use permits monitoring;
- Antimicrobial pesticides;
- e-Commerce;
- Container/containment inspections.

B. Targeting

The goal of targeting is to focus on the most significant environmental problems ***within*** a priority area by identifying ***specific*** pesticide products/producers, applicators and use patterns that may pose the greatest risk of harm to human health or the environment due to noncompliance. Risk mitigation is achieved, in part, through targeting activities to deter unlawful pesticide production, distribution, sale, or use. Targeting may be for inspections or other activities that are designed to raise compliance rates (e.g., screening activities conducted by other media inspectors that may provide useful information for the FIFRA program, working with manufacturers or retail food producers to set up audit programs for pesticide users and crop growers). Targeting also may include off-site activities such as record reviews that do not have to take place on-site.

Generally, targeting should consider:

- Collaborative discussion between co-regulators;
- Review of relevant data and information, e.g., monitoring and violations data, toxicity data, and tips and complaints;
- Location factors, such as proximity to underserved and vulnerable populations, as well as to impaired watersheds;

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- Pesticide products labeling and the chemical composition of registered pesticides distributed or sold in the United States;
- Prevention of unlawful formulations, unapproved claims, or adulterated and misbranded pesticides from being distributed, sold, or subsequently used;
- Improper or inadequate use directions or safety precautions on the product labeling which may constitute misbranding or where the accepted labeling has been determined inadequate;
- Improper use of pesticide products that may result in serious exposure incidents potentially leading to death or hospitalization;
- Production factors (including production volume, and product);
- Use/application factors (including use patterns of concern and volume or frequency of use);
- PEIs which focus on high toxicity pesticides;
- Use compliance in application settings (e.g., agricultural sites, structural, grain, or soil fumigation) with a focus on chemicals with a high risk for exposure or harm;
- Worker safety.
- Compliance history.

Specific targeting strategies for any given time period should be influenced by priorities emphasized in National Program Management Guidance as well as state and tribal priorities. Targeting strategies need to include three types of inspection components: for cause, neutral scheme, and pesticide formulation sampling.

1. "For-Cause" Targeting

For-cause inspections are typically time-sensitive. Any strategy that is intended to help prioritize for-cause inspections should provide for expeditious referrals and coordinated effort among EPA and state and tribal partners towards specific sectors of the regulated community, non-compliant behavior in the marketplace or by pesticide users. For-cause compliance monitoring often focuses on specific and suspected non-compliant situations and is conducted primarily by the regional offices for targeted products and by the state and tribal partners for pesticide misuse.

2. Neutral Scheme Targeting

Targeting strategies for neutral scheme inspections should consider the length of time since the last inspection, with longer times increasing the priority of the inspection, and emphasize specific sectors of the regulated community including:

- Pesticides that are highly toxic or are potentially hazardous to human health or the environment;
- Pesticides with disinfectant or antimicrobial claims;
- Pesticides produced in foreign establishments and imported into the United States;
- Pesticides packaged, labeled, and released for distribution, sale, and use by persons other than the primary registrant;
- Pesticides that are marketed and sold and found to be unregistered;
- Pesticides that have undergone significant registration amendments to address human health or environmental concerns;
- Pesticides whose registrations include the requirement for efficacy testing and submission; and

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- Pesticides whose registrations or specific uses have been cancelled and are subject to specific existing stocks provisions.

3. Pesticide Formulation Sampling

To gain the most benefit from a pesticide establishment inspection program, a formulation sampling strategy is necessary to identify which products should be collected. Both the establishment inspection program and the formulation sampling strategy should be developed jointly through negotiations among the state and tribal program offices, the state laboratories, and the EPA regional offices.

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VI. DATA MANAGEMENT AND UTILIZATION

Data must be collected in accordance with an approved Quality Management Plan (QMP) and collection must follow QA/QC requirements. Data quality, accuracy and completeness are essential. Regions should ensure federal data is entered into ICIS in a timely fashion. States and tribes must provide data and information to EPA in a timely and accurate manner, as set forth in state cooperative agreements.

A. Data Management and Reporting Requirements

1. Agency Enforcement Databases

EPA regional offices report pesticides enforcement information into two Agency electronic data systems:

a. Integrated Compliance Information System (ICIS)

Federal case information, including the environmental benefits of enforcement, is reported into ICIS. Data from ICIS help monitor and track the status of ACS measures for FIFRA compliance monitoring activities and target future activities. Accurate and timely ICIS data entry is of the utmost importance to monitor progress toward goals for FIFRA compliance monitoring activities.

b. Annual Commitment System (ACS)

The ACS assists National Program Managers (NPMs) and Regional managers in negotiating and agreeing on annual regional performance commitments. The ACS captures key program measures identified in National Program Guidance documents and is used to facilitate agreement on the final annual regional commitments that are made for each measure. The Regions report in ACS the number of inspections conducted using EPA credentials twice a year.

B. Targeting and Evaluation Tools

There are several targeting and evaluation tools available to EPA's pesticide compliance and enforcement program:

1. Enforcement and Compliance History Online (ECHO)

The Enforcement and Compliance History Online (ECHO) is the Agency's primary website for providing public access to regulatory compliance and enforcement data. ECHO includes information to determine whether compliance inspections have been conducted by EPA, states, or tribes, if violations were detected or enforcement actions taken, and any penalties assessed in those

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actions. This database has limited application for FIFRA since it only includes federal inspections and enforcement actions, which are obtained from ICIS.

2. Agency Databases

A wide variety of government databases and data systems support regulatory programs or serve as inspection targeting and compliance assessment tools. Some databases have limited access. The list below describes some of the databases available.

a. Section 7 Tracking System (SSTS)

The Section 7 Tracking System (SSTS) includes registration information about domestic and international pesticide producing establishments. Additionally, the database includes the type and amount of pesticide production for each establishment. SSTS includes the name and address of the producing establishment and the company which operates the facility. Currently, facility data recorded in SSTS does not include latitude/longitude information. The system has been transferred into the OPP data system PRISM.

b. Pesticide Registration Information System (PRISM)

The Pesticide Registration Information System (PRISM) has comprehensive electronic pesticide registration information. PRISM acts as a gateway to all pesticide registration information for the Agency's partners and stakeholders.

c. Office of Pesticides Programs Information Network (OPPIN)

The Office of Pesticides Programs Information Network (OPPIN) contains information about the registration status of products, data submission information, and correspondence with registrants and pesticide labeling. Because the data system contains FIFRA Confidential Business Information, access is limited.

d. Pesticide Product Labeling System (PPLS)

PPLS is a collection of images, in multi-page PDF format, of pesticide labels that have been accepted by OPP. The collection contains initially accepted labels for pesticide products registered under FIFRA, subsequent versions of labels that have changed via amendment or notification and associated correspondence about the terms of registration, specifying any changes which the registrant was required to make in the final printed label. Regional staff, states, tribes, and the public have access to information in PPLS.

e. State Labeling Information Tracking System (SLITS)

Currently, states and tribes use the State Labeling Information Tracking System (SLITS) to identify label issues to EPA for compliance evaluation. This database has the potential for broad use by states and tribes to facilitate compliance monitoring of individual regulated pesticide products. The database also is a useful tool for EPA regions.

f. **Public Health Tracking Network**

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The National Environmental Public Health Tracking Network is a system of integrated health, exposure, and hazard information and data from a variety of national, state, and city sources. It includes information on pesticide exposure.

3. Other Data Sources

a. National Pesticide Information Retrieval System (NPIRS)

The National Pesticide Information Retrieval System (NPIRS) is a collection of pesticide-related databases available by subscription. NPIRS is under the administration of the Center for Environmental and Regulatory Information Systems (CERIS) at Purdue University. The system contains labeling information about pesticides registered by EPA and many states. The PPLS is accessible to the public through NPIRS. A subset of NPIRS is the National State Pesticide Information Retrieval System (NSPIRS) that focuses on state registrations.

b. State Inspection Data

State inspection data is currently collected on Form 5700-33. Many states have electronic data systems to track inspections, enforcement, other field activities, and results.

c. Performance Measures

In 2012, a workgroup of EPA, state, and tribal pesticide regulators began efforts to develop new performance measures to replace the 2006 Government Performance and Results Act measures. The process and procedures for reporting data on the final new performance measures have been incorporated into the FIFRA Cooperative Agreement Guidance.

d. Sentinel Event Notification System for Occupational Risk (SENSOR)

Operated by the National Institute of Occupational Safety and Health, Center for Disease Control, SENSOR offers data on acute occupational pesticide-related illness and injury.

e. American Association of Poison Control Centers National Poison Data System (NPDS)

The NPDS is a comprehensive poisoning exposure surveillance database maintained by the American Association of Poison Control Centers containing information from the human poison exposure case phone calls taken by all 55 poison centers across the country.

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VII. Oversight of State and Tribal Programs

Regions conduct state and tribal enforcement program oversight as part of the state and tribal cooperative agreements, performance partnership agreements (PPAs) and/or performance partnership grants (PPGs). Cooperative agreement reviews, including reviews of performance under this CMS, must be conducted at least annually. End-of-year reports received from the state and tribe typically form the basis for the review. The purpose of these reviews is to determine whether cooperative agreement commitments were met and evaluate the adequacy of the state or tribal pesticide program. These reviews also aid in determining how state and tribal programs have targeted monitoring and enforcement activities in their respective programs. Regional reviews of state information should include an evaluation of pesticide monitoring and enforcement case files to determine whether actions taken by the state or tribe were consistent with the national and state policies approved as part of the pesticide program delegation.

It is recommended that regions conduct joint or oversight inspections with state or tribal pesticide inspectors to monitor the quality of field work and expand the knowledge base. EPA regions should review state and tribal inspection reports to ensure that inspections are conducted properly, appropriate inspection procedures are followed, and sufficient evidence is collected as part of EPA's routine actions. This review should be conducted as part of EPA's routine oversight of the cooperative agreement program during mid-year and end-of-year reviews, but, ideally would be conducted more frequently.

Where states and tribes are not meeting performance expectations, regions should take action to address serious shortcomings. Regions need to take action when necessary to communicate what needs attention to achieve the goals of federal environmental laws and ensure a level playing field among states.

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CMS APPENDIX – UNIVERSE OF THE FIFRA REGULATED COMMUNITY

The definition of a pesticide is very broad and includes: (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (3) any nitrogen stabilizer.

The FIFRA regulated community is very broad and includes pesticide registrants, producers, retailers, distributors, and pesticide applicators. Regulated products include, but are not limited to, pesticide products used in commercial production of agricultural crops, products for landscaping, disinfectants and other antimicrobials, pesticides for structural and indoor pests, and pesticide products purchased and used by homeowners.

EPA has primary responsibility for compliance monitoring of products and establishments. States have primary responsibility for use enforcement. In addition to providing guidance and establishing priorities, EPA Headquarters plays a large role in enforcement activities, which relate to the registration, cancellation, and labeling of pesticides (OPP) and compliance (OECA). The regions' resources are mainly directed at compliance monitoring and enforcement of pesticide product registrations and establishment requirements under FIFRA Sections 7 and 8. A significant portion of the national pesticide compliance and enforcement program's resources are directed at use activities, primarily by the states and tribes working under cooperative agreements.

As the regulated universe is so vast, a targeted approach is used to focus efforts on those segments that pose the greatest potential risk to human health and the environment.

EPA is able to quantify much of the regulated universe, but not all. For instance, certification requirements enable EPA to track the number of certified applicators licensed to apply restricted use pesticides. However, the Agency can make only general estimates of the much greater number of individuals who apply general use pesticides for which no certification is required.

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The universe of regulated entities and products is described in the following table.

Type	Number	Comments
Registrants	1,709[a]	Companies holding at least one active section 3 or 24(c) registration.
Registered Pesticide Products	18,681[a]	
Active Distributor Registrations	58,035[a]	Distributor registrations are based on section 3 registrations. A single section 3 registration may have many distributor registrations associated with it, thus the large number of distributor registrations in comparison to section 3 registrations.
Pesticide-Producing and Device-Producing Establishments	14,162[b]	Including foreign and domestic establishments.
Pesticide Retailers/Dealers/Marketplaces, including web-only dealers	Very large	The exact number is unknown. This segment of the regulated universe is so large and includes every location where general use pesticides (insect repellants, disinfectants, rodenticides, etc.) are sold. Some states maintain a database of all dealerships, retailers, and other marketplaces at which restricted use pesticides (RUPs) and general use pesticides (GUPs) are sold.
Applicators certified to use RUPs • Private • Commercial Total	 481,008 413,361 894,369[c]	Certified applicators are licensed to use restricted use pesticides.
Laboratories Conducting FIFRA Studies	1,400[d]	1,400 labs have submitted studies to EPA in the last 3 years.
Imports: Notice of Arrivals Received	24,246[e]	
Exports: Exports Notices	2402[f]	Foreign Purchasers' Acknowledgement Statements.
Experimental Use Permits	760[a]	
Section 18 Exemptions - Emergency Use Exemptions	4,456[a]	Emergency Use Exemptions are granted by the Administrator upon application from a state if certain criteria are met.
Section 24(c) Registrations – Special Local Needs -	2,589[a]	A state may provide registration for additional uses of federally registered pesticides formulated for distribution and use within that state to meet special local needs if the registration for such use has not previously been denied, disapproved, or canceled.

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Section 25(b) Product	Very large[g]	These products are exempted from FIFRA registration although some states my require registration. The regulatory and compliance monitoring status of this segment of the universe is very diverse and complex. Thirty seven states regulate these products with varying levels of oversight; some states require a complete product data review and/or efficacy testing, while others only require a registration fee, and yet others review some portions of the label for compliance issues.
Farms	2,226,956[h]	This number represents the number of farms in the states and territories. Information on farms on tribal lands is collected under a separate process by USDA beginning in 2007. The data on tribal farms is limited at this time.

a—Data through July 2009 from the Information Technology and Resources Management Division, OPP
b—Data through June 2013 from the Section Seven Tracking System, Pesticides, Waste and Toxics Branch, OC
c—Data for 2011 from the Certification and Worker Protection Branch, OPP
d—Data from the Laboratory Data Integrity Section, MAMPD, OC
e—Data estimates from Regions, in general through July 2009
f—Data as of calendar year 2008 from the Field and External Affairs Division, OPP
g—Information and comment from the Policy and Regulatory Services Branch, OPP
h—Data from the 2007 USDA Ag Census

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APPENDIX 6:

OPP GUIDANCE FOR SUBMISSION OF STATE AND TRIBAL WATER QUALITY MONITORING DATA

Inclusion of Water Quality Monitoring Data in OPP's Registration Review Risk Assessment & Management Process

Goal:

This Guidance describes the process for the submission of state and tribal surface and groundwater monitoring data, including but not limited to Clean Water Act (CWA) 303(d) & 305(b) data, for consideration in exposure characterizations for ecological and human health risk assessments and in risk management decisions for pesticide registration review.

Target Audience: State and Tribal Pesticide Lead Agencies; State and Tribal Water Agencies.

Background:

EPA's Office of Pesticide Programs (OPP) published the final rule for Pesticide Registration Review on August 9, 2006 with an effective date of October 10, 2006. This program ensures that all pesticides continue to meet current health and safety standards. The Congressional goal is to review all existing pesticides every 15 years. To support this process, OPP is interested in obtaining all available pesticide monitoring data that states and tribes may have for surface water and groundwater.

How Does OPP Use Water Monitoring Data from States and Tribes?

Monitoring data provide snapshots of pesticide concentrations in time at specific locations. In order for OPP to make the best use of this data, we need supporting information that will allow us to put the results in context with the larger picture of pesticide exposures in the environment. The more likely the monitoring sites reflect areas that have a likelihood of pesticide occurrence in water (based on pesticide use as well as local runoff and/or leaching vulnerability), sampling occurs during the time frame in which pesticides are expected to be used, and the sampling is frequent enough to estimate exposures for the endpoints of concern, the more likely OPP will be able to incorporate that data quantitatively in its risk assessment.

Typically, monitoring data is screened to identify any detection above modeled values and is not evaluated in a comprehensive manner unless the screening/Tier 1 assessments identify a risk of concern that triggers more refined/Tier 2 assessments. For Tier 2 assessments, when OPP uses monitoring data quantitatively it means that the data can be used as a direct measure of exposure in an ecological or human health dietary assessment. This is a high hurdle to clear because much of the monitoring data available are often not targeted to a particular use pattern or of sufficient frequency to capture durations of concern. How monitoring data is used quantitatively is dependent on the ancillary data and key among these is sample frequency. Sample frequency relative to the duration of concern (e.g., daily peak vs. annual mean) is a key

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driver in determining how monitoring data is used quantitatively. However, with adequate ancillary data, monitoring data may be used as direct inputs into risk assessment models. Also, it is possible that while a data set may not be national in scope, it may provide a quantitative measure on a regional or local scale in which case it could be used as a local refinement to national modeling.

If OPP cannot use a monitoring data set quantitatively, it may still be valuable in providing context to the exposure assessments. For instance, detections of a given pesticide can provide a measure of a lower bound estimate of exposure for purposes of risk assessment. While the data may not be robust enough to ensure a high-end exposure has been observed, the detections do indicate that transport has occurred in the study. At a minimum, qualitative data can provide a balance against modeled estimates and can be useful for characterization of risk conclusions. For example, refinements to modeling sometimes use alternative assumptions that may reduce predicted concentrations. However, if these predicted concentrations approach or are lower than those seen in monitoring data, then this may call into question the appropriateness of the refinement.

For more information on how OPP uses water quality monitoring data in its aquatic exposure assessments, see the document ***Evaluation and Use of Water Monitoring Data in Pesticide Aquatic Exposure Assessments*** located on OPP's website at: https://www.epa.gov/pesticide-reevaluation/evaluation-and-use-water-monitoring-data-pesticide-aquatic-exposure

What are the Most Important Elements Needed for OPP to Use the Data?

OPP recognizes that the types of water quality data collected might be different among monitoring programs. Water monitoring data would be most useful for risk assessment purposes if it included the following elements for surface water and groundwater:

- Study objective (i.e., purpose and design of the monitoring study); a copy of a report describing the purpose and design of the monitoring study or internet web address leading to this information would be useful if available
- Location description (latitude & longitude, if possible, or other reliable location information)
- Water body type (stream, river or other flowing body; lake, reservoir, or other static body; groundwater; nature of aquifer, e.g., surficial or confined)
- Date sampled
- Sample media (e.g., water, filtered water, bed sediment, tissue)
- Chemical analyzed and reported concentration
- Analytical method and detection limit (LOD) or limit of quantitation (LOQ)
- Depth to water level for groundwater
- Well characteristics, such as well depth, screened interval, and aquifer type if known (e.g., confined vs. unconfined)
- Well purpose (e.g., ambient vs. drinking water)

What Other Important Information Aids in Interpreting Monitoring Data?

- Quality assurance (QA)/quality control 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)

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- Time frame and duration of monitoring sampling
- Land use, including cropping pattern, agriculture/urban, etc. preferably in immediate vicinity of sample site though general information on specific pesticide use sites would be useful
- Pesticide usage that could affect water quality at sampling location
- Did the sampling methodology and analytical methods go through a formal QA process? If yes, is this process documented (e.g., in a report or on a website address)?
- For pesticides that adsorb to sediments: percent organic carbon, bulk density, etc.
- For some chemicals, environmental conditions (e.g., temperature, pH, hardness, turbidity) may affect mobility and persistence. If this is known to occur, information on the parameter would be helpful in interpreting the data.

Should I Submit Data that are already Publicly-Available?

As a matter of routine, OPP typically checks and reviews the following sources for pesticide monitoring data: 1) United States Geological Survey (USGS) National Water-Quality Assessment (NAWQA) Program; 2) EPA's STORET (short for STOrage and RETrieval) Data Warehouse; 3) United States Department of Agriculture (USDA) Pesticide Data Program Drinking Water Monitoring. If a state's or tribe's monitoring data are already contained within these sources, then simply let OPP know. If your data are available on another publicly-accessible website, please send us the link.

How Do I Know Which Pesticides OPP is Re-evaluating?

1. *Federal Register* (FR) Notification:
    a. Registration Review Initial Docket Openings for Comment: At the beginning of a review cycle, OPP notifies the public of docket openings through an FR Notice and seeks comment on OPP's anticipated chemical-specific work plans and data needs. [Dockets are generally opened for comment in the months of September, December, March, and June]
    b. Registration Review Draft Risk Assessments for Comment: In general, OPP expects to release draft risk assessments on a quarterly basis for public comment through an FR notice.
    c. Registration Review Proposed Decisions: OPP will announce the release of proposed decisions for public comment through an FR notice.

2. E-mail Notification: In addition to notification through the FR, OPP also notifies the EPA Office of Water (OW) and EPA Regional pesticides and water staff of pesticide cases undergoing re-evaluation in order to facilitate communication with state and tribal partners regarding these actions.

The schedule for chemicals currently in review and those scheduled for review over the next four years can be found on EPA's website at: https://www.epa.gov/pesticide-reevaluation/registration-review-schedules

When Should I Submit Data to OPP?

Data can be submitted to OPP at any time during the registration review process, which generally takes about six years. However, data are of most value approximately six months prior to initiating work on a draft risk assessment. OPP and OW will notify EPA Regional pesticides and water staff on a yearly basis, targeting the first quarter of the fiscal year, of the draft risk assessments that OPP intends to release for public comment that year. Regions will work with state and tribal water and pesticide agencies to submit identified data. OPP will publish draft risk assessments for public comment (generally for 60 days) and ask for comment, as well, on possible/practical risk management options for identified risks.

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Where Should I Submit the Data?

1. Submit to OPPWaterMonitoringData@epa.gov
2. If file sizes are too large to send via e-mail, contact your EPA Regional office

Who Do I Contact for Further Information?

EPA Headquarters: Tracy L. Perry, Pesticide Re-Evaluation Division, Office of Pesticide Programs, telephone number: (703) 308-0128; fax number: (703) 308-8090; email address: perry.tracy@epa.gov

EPA Regions:

Region 1: Rob Koethe, Koethe.Robert@epa.gov, (617) 918-1535

Region 2: Stephanie Tougas, Tougas.Stephanie@epa.gov, (732) 321-4436

Region 3: Christine Convery, Convery.Christine@epa.gov, (215) 814-2249

Region 4: Melba Table, Table.Melba@epa.gov, (404) 404-562-9086

Region 5: Bruce Wilkinson, Wilkinson.Bruce@epa.gov, (312) 886-6002
Holly McDonald, McDonald.Holly@epa.gov, (312) 886-6012

Region 6: Jerry Collins, Collins.Jerry@epa.gov, (214) 665-7562

Region 7: Shawn Hackett, Hackett.Shawn@epa.gov, (913) 551-7774

Region 8: Peg Perreault, Perreault.Peg@epa.gov, (303) 312-6286

Region 9: Patti TenBrook, TenBrook.Patti@epa.gov, (415) 947-4223

Region 10: Dirk Helder, Helder.dirk@epa.gov, (208) 378-5749

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APPENDIX 7:
BASE LIST OF PESTICIDES OF INTEREST

State List of Pesticides of Water Quality Concern Source: This list was developed by a state survey for Water Resource Monitoring Programs and Analytical Parameters in October 2005. The survey was conducted by the SFIREG Water Quality/Pesticide Disposal Working Committee (now known as the Environmental Quality Issues Working Committee). This list includes chemicals of concern for both ground and surface water.

Active Ingredient	Reg. Review Docket Opening	Active Ingredient	Reg. Review Docket Opening
2,4-D	Dec-14	Lambda-cyhalothrin	Dec-14
Acetochlor (+ ESA, OXA)	Jun-14	Lindane (voluntarily cancelled, use of existing stocks permitted until 10/1/09)	Cancelled
Alachlor (+ ESA)	Jun-14	Malathion	Jun-14
Aldicarb (+ degradates)	Jun-14	Mesotrione	Jun-14
Atrazine (+ DEA, DIA, DACT, Hydroxy)	Jun-14	Metalaxyl	Dec-14
Azinphos-methyl (cancelled 9/30/2012; existing stock 9/2013)	Cancelled	Metolachlor (+ ESA, OXA, S-Metolachlor)	Sept-14
Bentazon	Mar-14	Metribuzin (+ DA, DADK, DK)	Dec-14
Bromacil	Jun-14	Metsulfuron Methyl	Sept-14
Carbaryl	Sept-14	MSMA + other arsenical herbicides	Mar-14
Carbofuran	Cancelled	Napropamide	Sept-14
Chlorothalonil	Mar-14	Norflurazone (+ degradates)	Sept-14
Chlorpyrifos (+ TCP)	Mar-14	Pendimethalin	Sept-14
Clopyralid	Mar-14	Phenoxy herbicide group	12/2013-6/2014
Copper Pesticides	Sept-14	Phosmet	Jun-14
Dacthal (+ degradates) (cancellation being prepared)	Jun-14	Picloram	Dec-14
DBCP	Cancelled	Prometon	Mar-14
Diazinon	Jun-14	Prometryn	Mar-14
Dicamba	Dec-14	Propazine	Jun-14
Dimethenamid	Jun-14	Propiconazole	Dec-14
Diuron	Mar-14	Simazine (+ DACT, DIA)	Jun-14
Endosulfan (7/31/16 last use date on several minor crops)	Cancelled	Sulfometuron (et. al.)	Jun-14
Esfenvalerate	Dec-14	Tebuthiuron	Dec-14
Ethoprop	Dec-14	Terbacil	Mar-14
Glyphosate (+ AMPA)	Jun-14	Thiamethoxam	Dec-14
Hexazinone (+ Metabolite B)	Mar-14	Tralkoxydim	Sept-14
Imazamethabenz	Jun-14	Triallate	Sept-14
Imazapyr	Jun-14	Triclopyr	Jun-14
Imidacloprid	Dec-14	Trifluralin	Jun-14
Isoxaflutole	Jun-14		

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APPENDIX 8:
FIFRA COOPERATIVE AGREEMENT APPLICATION REVIEW CHECKLIST

This optional checklist is provided as a reference only to assist new grantees in completing the budget and work plan requirements related to the cooperative agreement application. The FIFRA Cooperative Agreement Work Plan-Report Template must be used as your work plan. The EPA application kit contains a separate budget sheet for the application. Regional staff may also want to use this checklist to make sure the work plan is complete.

State or Tribe and Lead Agency: _____

Project Period: _____

A. Budget

1. Is there a proposed budget for the following areas if the grantee 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

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pesticide management program maintenance YES NO

Comments:

B. Narrative Statement

1. Is there a discussion of performance to date regarding areas for which the grantee requests funding?

YES NO

Comments

2. Has the grantee certified that there are no impediments to carry out the proposed program? The grantee must have:

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 grantee and EPA identified? YES NO

C. General Work Plan Components

1. Has the grantee addressed each of the applicable work plan activities, as described in the attached Guidance?

OPP	YES	NO
OECA	YES	NO

2. Has the grantee provided the information contained in the Guidance to support requests for funding for additional program activities?

YES NO

Comments:

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

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

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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 grantees, is there a description of the accounting and filing system?

YES NO

Comments:

D. Enforcement

1. Identification of Work Years and Funding.

	Federal	State	Total
	_____	_____	_____
Work years*			
Inspectional	_____	_____	_____
Administrative	_____	_____	_____
Clerical	_____	_____	_____
Analytical	_____	_____	_____
Other	_____	_____	_____
Total	_____	_____	_____

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

a. Are work years to be funded identified by type of activity (inspectional, administrative, clerical, analytical, or other) and cost?

YES NO

Comments:

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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?

YES NO

Comments:

4. Has the need for a pesticide enforcement program been adequately addressed?

YES NO

Comments:

5. Has the grantee submitted/referenced a priority-setting plan which addresses the national enforcement priorities and state/tribal priority problem areas?

YES NO

Comments:

6. Has the grantee submitted a completed projected inspection commitments?

YES NO

Comments:

7. Has the grantee agreed to conduct targeted inspections? YES NO

Comments:

8. Does the grantee commit to consistency with national compliance monitoring strategies?

YES NO

Comments:

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9. Does the grantee commit to using the Guidance provided in EPA's updated Pesticides Inspection Manual when conducting inspections?

YES NO

Comments:

E. Quality Assurance

1. Does the grantee have an EPA approved Quality Management Plan (QMP)?

YES NO

Comments:

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	NO
(h)	Provisions of Analysis Results;	YES	NO
(i)	Submission/Retention of Reports;	YES	NO

Comments:

F. Enforcement Capability

1. Has the grantee submitted procedures for forwarding inspection reports with suspected violations to EPA?

N/A YES NO

Comments:

2. 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?

N/A YES NO

Comments:

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3. Does the application provide as an attachment or reference an up-to-date enforcement response policy (ERP) which the grantee 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:

4. Is there any reference to procedures for resolving cross jurisdictional issues between states and tribes?

N/A YES NO

Comments:

5. Tracking/Management System:

(a) Does the grantee 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) For new grantees, is there a description of the system?

YES NO

Comments:

(c) Does the work program or Quality Management Plan address maintenance of tracking documents and associated files and length of time maintained?

YES NO

Comments:

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G. Reporting

1. Does the application provide for the timely submittal of accomplishment reporting?

YES NO

Comments:

2. For new grantees, 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 (if required) and end-of-year evaluations?

YES NO

Comments:

4. Does the application address any unresolved issues identified in the most recent mid-year and end-of-year evaluations?

YES NO

Comments:

5. Does the application address submittal of the annual reporting requirements as required by the FY15-17 FIFRA Cooperative Agreement Guidance?

YES NO

Comments:

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APPENDIX 9:
EPA PESTICIDE STATE/TRIBAL COOPERATIVE AGREEMENT APPLICATION REVIEW PROCEDURES

A. General

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

The Regional Administrator will review each cooperative agreement application received and will either approve, conditionally approve, or disapprove the application within 60 days of receipt (40 CFR Part 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 and compliance with 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 Safety Programs:
Kevin Keaney, Chief
Certification Worker Protection Branch
Field and External Affairs Division (7506P)
Office of Pesticide Programs
Office of Chemical Safety and Pollution Prevention
Phone - 703/305-7666

For questions concerning all other OPP Program Activities:
Lance Wormell, Chief
Government and International Services Branch
Field and External Affairs Division (7506P)
Office of Pesticide Programs
Office of Chemical Safety and Pollution Prevention
Phone: 703/603-0523

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For concerning Compliance Monitoring and Enforcement Activities:

Elizabeth Vizard, Chief
Pesticides, Waste and Toxics Branch
Monitoring, Assistance and Media Programs Division
Office of Compliance (2227A)
Office of Enforcement and Compliance Assurance
Phone: 202/564-5940

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 national pesticide program areas in this Guidance, and any additional regional priorities. In reviewing applications, the Regions may wish to use the FIFRA Cooperative Agreement Application Review Checklist (Appendix 8) 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 plan commitments, and time frames for accomplishing the commitments, in accordance with the national Guidance, and any regional guidance as appropriate.
- The grantee's objectives and expected results for any supplemental programmatic or enforcement activities are consistent and compatible with the national Guidance, and any regional guidance as appropriate.
- 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, or any additional programmatic or enforcement supplemental activities.

The region should also determine if successful completion of the work plan is possible in view of the grantee's existing program and enforcement authority, resources, quality system and other applicable, known issues.

D. Time Factor Guidelines

As a result of a survey conducted in 1997, EPA, in consultation with SFIREG, developed the following 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 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.

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Activity	Work hours to Complete Activity
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 inspection 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. In general, only the inspection and analytical work hours should be used to calculate productivity levels. 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.

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 approximately equal the number of work hours which each grantee 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 grantees, a normal work year consists of 1800 hours after allowing for leave and holidays.

E. Administrative Review

The Regional Grants Management Office will perform an administrative review and evaluation to determine whether the application meets the requirements of the EPA Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. Additional references which may be helpful when developing or reviewing an application include specific sections of 40 CFR, Part 35 below:

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For States:
Pesticide Enforcement: 40 CFR Part 35.230 - 35.235
Certification & Training: 40 CFR Part 35.240 - 35.245
Pesticide Program: 40 CFR Part 35.250 - 35.252

For Tribes:
Pesticide Enforcement: 40 CFR, Part 35.640 -35.645
Certification and Training: 40 CFR Part 35.646-35.649
Pesticide Program: 40 CFR Part 35.650-35.659

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

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APPENDIX 10:

GUIDELINES FOR EPA FORM 5700-33H WITHIN THE FIFRA WORK PLAN-REPORT TEMPLATE

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 FIFRA template must be used for this purpose. The work plan must also specify that participating states and tribes are to report back to the Agency, at least annually or as negotiated with the region, 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].

All grantees participating in the FIFRA cooperative agreement program must project and report accomplishments for the pesticide enforcement program using EPA Form 5700-33H in the FIFRA Cooperative Agreement Work Plan-Report Template (FIFRA template).

The guidelines and definitions below should be followed to insure uniform reporting.

A. Reporting Under the Cooperative Agreement

The Agency encourages grantees to provide the Agency with summaries of their total yearly pesticide inspection and enforcement accomplishments. The Agency believes that this summary will not only provide a more accurate picture of grantee inspection and enforcement programs, but also give a more realistic national view as well. Total program accomplishments include 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 and included with the cooperative agreement application. These numbers represent the grantee's annual commitments under the cooperative agreement.

When asked, 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.

Grantees 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 annually. The accomplishments reported must include inspections conducted, samples collected, and enforcement actions taken. Reports must be submitted to the regional office by the grantee as indicated in the FY18-21 FIFRA Cooperative Agreement Guidance.

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Grantees must submit their inspection information to the regions annually, as negotiated with the regions, within 90 days after the project period ends. Regions will then review the information for completeness and submit it to a joint OPP/OECA mailbox: FIFRA-EOYReports@epa.gov by February 28th each year.

The following are uniform reporting requirements for reporting accomplishments:

1. Inspections should be reported only if an appropriate inspection report is completed.

2. The **initial reason** for the inspection **determines** the appropriate inspection **category** for reporting.

3. If more than one type of inspection is conducted for the same visit, and each inspection is completely documented, then each inspection can be counted as a separate inspection.

4. Grantee enforcement actions resulting from inspections are reported on Form 5700-33H in the FIFRA template. This includes enforcement actions for both federal and state/tribal violations.

5. Enforcement actions should be reported for the period in which they are **issued**, regardless of when the inspection was conducted.

6. Enforcement actions are to be reported under the inspection category heading for the initial inspection which led to the enforcement action.

7. 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, below 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. Grantees 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. Inspection reports of all inspections conducted using EPA credentials must be forwarded to EPA.

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.

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- 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.

a. 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.

b. 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.

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).

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Non-agricultural For Cause Inspections

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

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.

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. Note: inspections involving the container/containment rules are typically conducted during PEIs.

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.

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.

Export Inspections

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

Certified Applicator License and Records Inspections

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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.

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 grantee 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

Enforcement actions initiated as a result of an inspection may be reported on EPA Form 5700-33H within the FIFRA Template.

It is understood that many grantees 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:

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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.

10. Other Enforcement Actions
This is 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:

<u>Inspections Conducted</u>

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

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.

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APPENDIX 11:

GUIDELINES FOR WPS EPA FORM 5700-33H WITHIN THE FIFRA WORK PLAN-REPORT TEMPLATE

All grantees participating in the FIFRA cooperative agreement program must project and report accomplishments for their pesticide enforcement program. EPA Form 5700-33H is contained in the FIFRA Cooperative Agreement Work Plan-Report Template (FIFRA template), and must be used to provide this information to the Agency. This information will provide a more accurate picture of a grantee's inspection and enforcement program, and provide a more realistic national view as well.

WPS Agricultural Inspections Enforcement Reporting
Grantees must submit required information annually, as negotiated with the regions, within 90 days after the project period ends. Regions will then review the information for completeness and submit the information to a joint OPP/OECA mailbox: FIFRA-EOYReports@epa.gov by January 15th each year. WPS EPA Form 5700-33H is divided into two sections. The left side of the form is divided in four columns to collect total number of WPS inspections conducted in a reporting period:

1. WPS Tier I Inspection column: is subdivided in two columns, *Use and For Cause* to collect total number of WPS Tier I agricultural use inspections, and the total number of Tier I for cause inspections conducted during the reporting period. This includes capturing the number of inspections conducted at facilities claiming the Immediate Family Exemption. The total number of inspections at facilities claiming the Family Exemption, a subset of the total Tier 1 and Tier II inspections, is recorded in the Immediate Family Exemption block.

2. WPS Tier II Inspection column: is subdivided in two columns, *Use and For Cause* to collect total number of WPS Tier II agricultural use inspections, and the total number of Tier II for cause inspections conducted during the reporting period. This includes capturing the number of inspections conducted at facilities claiming the Immediate Family Exemption. The total number of inspections at facilities claiming the Family Exemption, a subset of the total Tier 1 and Tier II inspections, is recorded in the Immediate Family Exemption block.

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

4. 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.

Note: The C&T portion of the form does not need to be completed.

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).

Violations during WPS Inspections
The right side of the WPS EPA Form 5700-33H is for collecting violations documented during WPS inspections. There are ten WPS Violation Categories listed in the first column.

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The second column is 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 WPS 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 recommends that all grantees with enforcement programs provide this information to fulfill our goal. If you are interested in additional information, links to additional materials are provided below for your convenience.

U.S. EPA Worker Protection Standard Agricultural Inspection Guidance
The WPS Agriculture Inspection Guidance provides useful information to inspectors on how to conduct thorough and nationally consistent agricultural inspections under EPA's WPS program.
https://www.epa.gov/compliance/worker-protection-standard-agricultural-inspection-guidance

Risk-Based Inspection Targeting Strategy for Worker Protection Compliance Monitoring Activities
States and tribes should verify compliance with the 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. This Guidance provides a targeting approach states and tribes can use to identify the establishments and situations in the state or area of tribal jurisdiction that represent the highest risk to pesticide workers and/or handlers.
https://www.epa.gov/sites/production/files/2014-10/documents/wps-cm-review-2004.pdf

FIFRA Cooperative Agreement Work Plan-Report Template
This link will take you to the FIFRA Cooperative Agreement Work Plan-Report Template which contains all reporting forms including the WPS EPA Form 5700-33H.
https://www.epa.gov/compliance/federal-insecticide-fungicide-and-rodenticide-act-state-and-tribal-assistance-grant

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APPENDIX 12:

GUIDELINES FOR CONTAINER/CONTAINMENT EPA FORM 5700-33H WITHIN THE FIFRA WORK PLAN-REPORT TEMPLATE

Introduction
All grantees participating in the FIFRA cooperative agreement program must project and report accomplishments for their pesticide enforcement program. EPA Form 5700-33H is contained in the FIFRA Cooperative Agreement Work Plan-Report Template (FIFRA template), and must be used to provide this required information to the Agency.

Grantees must submit all required information annually, as negotiated with the regions, within 90 days after the project period ends. Regions will then review the information for completeness and forward the information to a joint OPP/OECA mailbox: FIFRA-EOYReports@epa.gov by January 15th each year.

Types of Inspections
The left side of the Container/Containment EPA Form 5700-33H is set up to collect the number of inspections for two types of inspections: (1) producer establishment inspections with containment and (2) non-PEI containment only inspections. These types of inspections are described below in the definitions section.

Container/containment information could be collected during other types of inspections, such as producer establishment inspections (without containment) and marketplace inspections. The number of PEIs and marketplace inspections should be reported annually as outlined in the Guidance, and must be reported on the standard EPA Form 5700-33H within the FIFRA template.

The right side of the form is for collecting Container/Containment potential violations documented during inspections. Nine violation categories are listed and they are defined below. The totals here should represent the violations found during any type of Container/Containment inspection, i.e., producer establishment inspections with containment; non-PEI containment only inspections; PEIs without containment; or marketplace inspections.

Definitions
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.

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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. States that are implementing state pesticide containment regulations (that provide at least equivalent environmental protection to the federal pesticide containment regulations) are encouraged – but not required – to report their non-PEI containment only inspections.

Violations

1. **Deficient labeling (i.e. cleaning and disposal instructions)** – Violations of any of the labeling requirements for refilling statements and cleaning instructions.

2. **Deficient container design (valves, openings)** – Violations of the requirements for container design (DOT regulations); marking; tamper-evident devices; one-way valves; container integrity; vent, gauge, and/or shutoff valve standards.

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 (or the repackaging contract), 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.

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APPENDIX 13:

REPORTING AND COORDINATION OF HIGH LEVEL PESTICIDE INCIDENTS

Grantees are required to report high level pesticide incidents to EPA regions within the first 24 hours of learning about the event. It is understood that not all details will be available immediately, but will need to be reported as they are learned. As described below, high level pesticide incidents involve possible serious adverse effects to human health or the environment and most likely require coordination between EPA offices and other agencies. These incidents may or may not be a referral under FIFRA Section 27(a).

Definition of a High Level Incident

High level pesticide incidents involve possible serious adverse effects which may require close cooperation with EPA offices or other agencies to conduct an investigation or to bring the incident to resolution. Examples of high level incidents may include but are not limited to:

Human-related:

- Human fatality;
- Any incident involving schools, schoolchildren or minors;
- Hospitalization of exposed human(s);
- Confirmed exposure to 5 or more individuals (if a low risk pesticide is involved the number can be higher);

Pet/Domestic Animals/Livestock:

- Incident involving death to livestock or another domestic animal;
- Confirmed exposure or death of a pet;

Ecological:

- Widespread environmental contamination (or potential thereof);
- Fish or wildlife incidents that meet the following threshold:
    - 25 or more aquatic animals (fish, tadpoles, shellfish, etc.)
    - 3 or more raptors (e.g., eagles, hawks, and owls)
    - 10 or more non-raptor birds
    - 1 or more large mammalian or reptilian predator(s) (e.g., wolf, coyote, mountain lion, or alligator) or megafauna species (e.g., bison, elk, or moose)
    - 5 or more mammals, reptiles, or terrestrial amphibians of types other than large predators or megafauna
- Any incident involving a federally listed species;
- Alleged pollinator incidents involving 50 or more bees;
- Significant damage to crops;
- Potential for illegal food crop or commodity pesticide residues;
- Significant fire, spill or improper disposal involving pesticides;

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- Homeland Security issues (e.g., pesticides implicated in a situation impacting a large population, food/water supply or livestock; or pesticides needed to control a pathogen, virus or bacteria);

  Other:
- Unusually large and unexpected number of incidents involving a certain active ingredient (AI) or product reported within a short time span;
- Potential for significant media coverage based on specific use incident.

In addition, some high-level reportable incidents may occur with federally exempt pesticides, e.g., treated seeds, 25(b) pesticides. Each regional office, OPP-FEAD and OECA-OC and OECA-OCE shall use its best professional judgment to identify a high level incident.

Notification Requirements and Process

When a grantee determines that an incident requires high level pesticide incident reporting, it will initiate the process by reporting the incident to the regional point of contact (POC) who may be the project officer, technical contact or pesticide program or enforcement supervisor. Regions should contact the headquarters offices within the first 24 hours. Each regional and headquarters office (OPP-FEAD and OECA-OC and OECA-OCE) will identify primary and backup points of contact (POCs) to ensure timely transmission of incident information to each other if a high level incident occurs.

The regional POC should be contacted as soon as possible, but no later than 24 hours after receiving incident information. Grantees should not wait to notify the region until the information is complete and confirmed, but should caveat and qualify initial information as appropriate. The initial contact should be via phone (by direct contact, not voice mail), followed up by an e-mail. The initial information should include the following information if available:
- Location (preference for latitude/longitude, township or other),
- Pesticide or substance involved or suspected,
- Date of incident,
- Target site/pest (if there is one),
- Source of information,
- Brief description of incident,
- Identity of future contact person(s), and
- When the reporting agency will be able to provide an update.

The regional POC will relay the information to headquarters and their own regional management as soon as possible but no later than 24 hours after their communication was received. It is understood that not all details may be available immediately and will need to be communicated as more information is learned. The initial call should go to the following offices:
- OPP-FEAD Government and International Services Branch Chief, Lance Wormell
- OECA-OC Pesticide, Waste & Toxics Branch Chief, Liz Vizard, and
- OECA-OCE Pesticides and Tank Enforcement Branch Chief, James Miles.

In addition, the incident should be sent to OPP's pesticide incident mailbox: Report.Pesticide.Incident@epa.gov.

The regional POC will then follow up with a brief e-mail (which includes any information from the state or tribe) relaying basic details of the incident. At this point, the regional POC also needs to ascertain if this is the type of incident that would require notification of the Regional Incident Management System

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(this may be a Regional Incident Coordination Team (RICT) or an Emergency Response Center). Each region has a 24/7 emergency phone number. Other federal agencies will be notified by the regional POC when the situation warrants.

The OPP-FEAD POC will notify the OECA-OC and OECA-OCE contacts and each will disseminate the incident report to other parts of their organization, as appropriate (e.g., upper management, human health specialist, incident coordinator, water quality coordinator, etc). Note, incidents reported to OPP will be used to assess future registration decisions.

If an EPA headquarters or regional office learns of an incident through a tip, via media coverage or other source of information, EPA will implement this process in the reverse order to assure that the grantee is aware of it.

After all affected EPA offices are informed, subsequent information may be communicated via the original process when circumstances require, or as determined by the offices involved.

Impacts on Future Registration and Registration Review Decisions

An OPP Incident Screening Team representing all OPP divisions is actively developing a screening system to ensure all reported high priority incidents are screened in a timely manner and included in future registration decisions as appropriate. Based on the severity of the incident, there are three possible outcomes: 1) The team concludes that the incident is likely a high-priority incident requiring immediate attention by the chemical team to determine the appropriate next steps; 2) the incident is not a high priority incident, but is of sufficient significance that the chemical team should be made aware of the incident; and 3) the incident can wait until the next review of the chemical for either a registration action or registration review. Generally, these incidents won't be forwarded, but rather kept in OPP's Incidents Data System to be incorporated into future risk characterizations documents.

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