



# **Federal Insecticide, Fungicide, and Rodenticide Act**

## **Compliance/Enforcement Guidance Manual**

### **Policy Compendium**

#### **Volume 2: State-Related Guidance**

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Volume 2 of the FIFRA Compliance Enforcement Guidance Manual Policy Compendium contains the state-related guidances issued by the Office of Compliance Monitoring that are currently in effect. The Table of Contents of the remaining volumes, FIFRA miscellaneous sources, and a list of obsolete documents are contained in the Appendix.

Any questions or comments concerning these documents should be addressed to:

Director, Policy and Grants Division  
Office of Compliance Monitoring (EN-342)  
Office of Pesticides and Toxic Substances  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

## **Volume 2: State-Related Guidance**

<u>TITLE</u>	<u>DATE</u>
Memorandum: Appropriate Documents to Be Presented by State Inspectors Conducting Pesticide Use Inspections in States Having Primacy	12/18/80
Methyl Bromide Label Revision in Response to Health Concerns of Structural Fumigants	09/01/92
Consolidated Pesticide Cooperative Agreement Guidance for Current Fiscal Year	

## Volume 2: State-Related Guidance (continued)

<u>TITLE</u>	<u>DATE</u>
<u>FIFRA Section 26 and 27</u>	
Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations [46 FR 26058]	05/11/81
Federal Insecticide, Fungicide, and Rodenticide Act, State Primary Enforcement Responsibilities (Final Interpretive Rule for §§26 & 27) [48 FR 404]	01/05/83
Memorandum: "FIFRA §§26 and 27 and SPMS Measures"	10/02/85

DEC 18 1980

MEMORANDUM

SUBJECT: Appropriate Documents to be Presented by State  
Inspectors Conducting Pesticide Use Inspections in  
States Having Primacy

TO: Enforcement Division Directors  
Air & Hazardous Materials Division Directors  
Pesticide Branch Chiefs

At present most State inspectors conducting pesticide use inspections present credentials headed: "United States Environmental Protection Agency". The credential later identifies the inspector as "an employee of the State of \_\_\_\_\_." This credential has been supplied by the Agency as a convenience to States which have cooperative enforcement agreements with EPA. (EPA Form 3540-28 (Rev. 4-78))

These credentials were designed before primacy when States conducted use inspections for violations of FIFRA under the auspices of a cooperative agreement. Pursuant to Section 26, most States now exercise primary enforcement responsibility for all use violations. Use inspections are, therefore, primarily a State activity. Consequently, use inspections in States with primacy are undertaken under the authority of State law, (this is true even where the use inspections are Federally funded).

Therefore, during use inspections, it is appropriate for State inspectors to present credentials which indicate that the inspectors are acting under authority of State law. The existing Federally supplied credentials are misleading since they are headed "United States Environmental Protection Agency." In the future, State inspectors conducting pesticide use inspections should present credentials that are issued by their State employers. If State credentials do not already exist, the State is responsible for designing and providing such credentials to their inspectors.

It is additionally necessary for States to cease using the Federally supplied "Notice of Inspection" form, (EPA Form 3540-2 (Rev. 3-75)). The present form erroneously identifies use inspections as being authorized under the authority of the "U.S. Environmental Protection Agency". The States are responsible for drafting new Notice of Inspection forms. The States must design their Notice of Inspection form in a manner which parallels the EPA form. A consistent format will greatly aid the indexing of the information in the Agency computer. The State Notice of Inspection form should indicate the relevant State statutes which authorize the inspection. While States await the printing of the new forms, they may use the Federally supplied forms if all indicia of Federal authority are obscured.

It should also be noted that State inspectors conducting use inspections cannot rely upon FIFRA for authority to take affidavits. Consequently the Agency affidavit form (EPA Form 3540-11 (Rev. 9-75)) may not be used by States during use inspections. If State law grants this power, of course, the inspector may take an affidavit according to State procedures.

I hope that the Regions will implement these guidelines during the next 60 days. Please contact John Martin of my staff at 755-1075 if you have any questions.

A. E. Conroy II, Director  
Pesticides and Toxic Substances  
Enforcement Division



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

SEP 1 1992

OFFICE OF  
PESTICIDES AND TOXIC  
SUBSTANCES

MEMORANDUM

SUBJECT: Methyl Bromide Label Revision in Response  
to Health Concerns of Structural Fumigants

FROM: John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring

TO: Addressees

In response to EPA's health concerns about Methyl Bromide pesticides used for commercial and structural fumigation, the registrants for methyl bromide structural fumigants have revised their labeling, as required by EPA, to incorporate the language set out in Attachment A. There are five registrants with thirteen methyl bromide products which are affected by the labeling revisions. (See attachment B.)

All five registrants committed to certain conditions for continued registration of their Methyl Bromide products. The methyl bromide registrations listed in Attachment B have been amended to add the following conditions:

- o By June 15, 1992, registrants were to submit revised product labeling as stated in the Interim Approved Labeling (Appendix A). This deadline has already passed and all of the registrants have adhered to this.
- o By August 15, 1992, all products which are sold or distributed by the registrant must bear the June 1992 revisions concerning aeration and reentry and the fact sheet for commercial and residential structural fumigation (see enclosure-Interim Approved Labeling, Appendix A).

Please note that the Registrant may request that its label(s) contain aeration procedures different from those specified in Appendix A if the registrant submits data showing that such procedures will provide an adequate margin

of safety for persons reoccupying the structure. However, all five registrants revised their labeling to add the aeration procedure specified by the Agency. None have submitted data supporting a different aeration procedure.

- o Registrants must notify all of their customers by certified mail that sale or distribution of Methyl Bromide pesticide products for residential or commercial structural fumigation will be prohibited after September 1, 1992 unless the product labels bear the revised use directions. Registrants must then keep copies of both the notifications and the receipts for two years.
- o The Registrant will use the Customer Letter provided by the Agency on May 15, 1992 as the notification letter referenced in the preceding paragraph. (See Attachment C.)
- o Registrant will offer to relabel products for their distributors, and if distributors agree, the Registrant will relabel such products.
- o The Registrant will put a month/year code on all amended labels.

Please note that a policy question arose regarding the use of California's Methyl Bromide Fact Sheet in place of EPA's Fact Sheet. Upon review of both, the Office of Pesticide Programs (OPP) has determined that in the state of California only, the use of California's Customer Fact Sheet will be permitted. In light of this decision, we are issuing Compendium Policy No. 3.10 entitled, "Use of California's Methyl Bromide Fact Sheet." (See Attachment.)

Please also note that a question has been raised regarding the deletion of the greenhouse use site from two product labels which have voluntarily removed all structural residential and commercial fumigation uses from the label. This issue has been referred to OPP and we will notify you when this issue is resolved.

If you have any additional questions regarding this label revision, please call Phyllis Flaherty or Shruti Desai of my staff at (703) 308-8383 or (703) 308-8291, respectively.

Attachments

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## APPENDIX A

### INTERIM APPROVED LABELING

#### LABELING FOR MANUFACTURING USE PRODUCTS:

This product cannot be formulated into an end-use product for residential or commercial structural fumigation unless the label of the end-use product incorporates the following directions:

#### FUMIGATION FOR RESIDENTIAL OR COMMERCIAL STRUCTURES

##### Aeration and Reentry:

At the end of the exposure period, after all tarpaulins or seals are removed from the structure, open all interior and exterior doors, windows, and vents that are operational. No person shall be allowed to reenter the structure unless wearing protective clothing and a NIOSH/MSHA approved self-contained breathing apparatus (SCBA) or combination air-supplied/SCBA respirator until the following criteria are met:

1. A) If non-mechanical or natural ventilation is used, the structure must be aerated for a minimum of seven days from the time the tarpaulins are removed.

B) After aeration is completed, the level of methyl bromide in the structure must be measured using a gas detector device with a minimum detection limit of 3 ppm for methyl bromide. Measurements must be taken from an interior electrical outlet by inserting the detection device in the ground receptacle, or from other enclosed space within the wall on an interior and a perimeter wall; and

C) (i) The level of methyl bromide is less than 3 ppm from each area measured; or

(ii) If the level of methyl bromide is 3 ppm or greater, the structure shall be aerated for an additional 24 hours. At the end of the 24 hour period, the level of methyl bromide must be measured from the areas previously sampled. These procedures must be repeated until the level of methyl bromide is below 3 ppm.

2. If mechanical aeration is used:

A) For structures without attics, an aeration fan(s) must be inserted in a window or other exterior opening and sealed so that the air inside the structure is exhausted out of the structure. The aeration fan(s) must be capable of displacing 5,000 cubic feet of air per minute. To facilitate aeration, exterior openings, such as windows, vents, or an access door to the subarea, should be utilized. The structure must be aerated with the fan(s) operating for a minimum of 72 hours;

B) After aeration is completed, the level of methyl bromide in the structure must be measured using a gas detector with a minimum detection limit of 3 ppm for methyl bromide. Measurements must be taken from an interior electrical outlet by inserting the detection device in the ground receptacle, or from other enclosed space within the wall on an interior and a perimeter wall; and

C) (i) The level of methyl bromide is less than 3 ppm from each area measured; or

(ii) If the level of methyl bromide is 3 ppm or greater, the structure must be aerated for an additional 12 hours. At the end of the 12 hour period, the level of methyl bromide must be measured from the areas previously sampled. These procedures must be repeated until the level of methyl bromide is below 3 ppm.

3. A) For structures with attics, an aeration fan must be inserted in the attic access door and a window or other exterior opening, and both sealed so that air inside the structure is exhausted outside the structure. The aeration fans must be capable of displacing a minimum of 5,000 cubic feet of air per minute. To facilitate aeration, exterior openings, such as windows, vents, or an access door to the subarea should be utilized. The structure must be aerated with the fans operating for a minimum of 72 hours;

B) After aeration is completed, the level of methyl bromide in the structure must be measured using a gas detector device with a minimum detection limit of 3 ppm for methyl bromide residues. Measurements must be taken from within an interior electrical outlet by inserting the detection device in the ground receptacle, or other enclosed space within an interior and a perimeter wall; and

C) (i) The level of methyl bromide is less than 3 ppm from each area measured; or

(ii) If the level of methyl bromide is 3 ppm or greater, aeration must continue for an additional 12 hours. At the end of

the 12 hour period, the level of methyl bromide must be measured from the areas previously sampled. These procedures must be repeated until the level of methyl bromide is below 3 ppm.

4. For structures with basements, in addition to the requirements of paragraphs 1, 2, and 3 above, the windows, vents, and interior doors of the basement must be open, and

A) After aeration is completed, the level of methyl bromide in the basement must be measured using a gas detector device with a minimum detection limit of 3 ppm for methyl bromide residues. A measurement must be taken from an interior electrical outlet by inserting the detection device in the ground receptacle, or from other enclosed space within the wall on an interior wall. In the absence of an interior wall, a measurement must be taken of the ambient air in the basement; and

B) (i) The level of methyl bromide is less than 3 ppm; or  
(ii) If the level of methyl bromide is 3 ppm or greater, the structure must be aerated for an additional 24 for natural ventilation or an additional 12 hours for mechanical aeration. At the end of the additional ventilation period, the level of methyl bromide must be measured from the area in the basement previously sampled. These procedures must be repeated until the level of methyl bromide is below 3 ppm.

#### Structural Fumigation Fact Sheet

A. The applicator must obtain a structural fumigation fact sheet which has been signed by, and provided to, the following persons:

(1) an adult occupant of a single family dwelling prior to the parties entering into a fumigation agreement,

(2) (A) The owner, manager, or designated agent of the building for multiple-family dwellings, provided he or she acknowledges in writing to the applicator that a copy of the Structural Fumigant Fact Sheet has been provided to an adult occupant of each unit prior to the parties entering into a fumigation agreement; or

(B) An adult occupant of each unit in a multiple family dwelling prior to the parties entering into a fumigation agreement, or

(3) the owner, manager, or designated agent for all structures or businesses other than family dwellings,

B. The Structural Fumigation Fact Sheet shall state:

The purpose of this handout is to inform the consumer of possible health hazards associated with the use of the structural fumigant, methyl bromide. To make sure you have been given an opportunity to read this, applicators are required to obtain the signature of the owners and occupants of property to be fumigated with methyl bromide. You will also be given a copy of this fact sheet to keep.

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**Structural Fumigants: Methyl Bromide**

**ATTENTION**

**Read This Fact Sheet Completely Before Signing**

Fumigation involves the introduction of poisonous gases into every part of the structure, including inside the walls. Because overexposure to these gases can be harmful to people, your building will be ventilated before you will be allowed to return.

This fact sheet provides basic information about the structural fumigant, methyl bromide, as well as information about why and how buildings are fumigated, methyl bromide health risks, how to know if you are exposed, ways to minimize your exposure, and several phone numbers to call for more information.

New rules for structural fumigation have substantially increased the time between fumigant use and the time an occupant is allowed back into the building. Post-fumigation ventilation has also been improved significantly. These changes should be adequately protective, but you should know some basic facts about structural fumigants.

**Why Buildings Are Fumigated** - Houses and other structures are fumigated to kill insect pests living in walls or wood. There are sometimes other ways to deal with these pests, and building owners should investigate them. However, fumigation is sometimes the only method for handling extensive infestations of wood-destroying insects. You can discuss the possibility of alternatives with your pest control company.

**Why Buildings Are Fumigated** - There are two pesticides used for structural fumigations: methyl bromide and sulfuryl fluoride (known by the trade name, Vikane.) Each has advantages and disadvantages in terms of their effectiveness in killing pests

which professional fumigators can discuss with you. Your fumigator should also provide you with a list of items you need to remove from your home before the fumigation starts.

Methyl bromide is a gas. Before fumigation starts, the building to be fumigated is completely sealed and covered with a tarp to keep the gas in the building so it can penetrate wood to kill the pests. The tarp is left on for one to two days. Warning signs are posted around the building notifying people to keep out because the levels of the pesticide in the building during fumigation can kill a person.

After the tarp is removed, a professional fumigator will go into the building wearing a compressed air tank and mask and open the doors and windows. Powerful fans may also be set up to pull fresh air into the building.

It is now required that buildings fumigated with methyl bromide be aired out for a minimum of 72 hours after the tarp is removed. Then, the fumigators are required to measure the levels of methyl bromide inside the walls of buildings to make sure they are below three parts per million before you are allowed to go back in.

The ventilation procedures make it unlikely that any remaining fumigant in the living space will be a health hazard after the house is cleared for reoccupancy. However, you should be aware of the symptoms of overexposure to methyl bromide, since it is sensible to be cautious when dealing with a potentially hazardous chemical.

Small pockets of fumigant can remain in dead air space between walls and inside cabinets, and in porous material such as furniture, and may enter into the living space for a few days after fumigation. That's why a mandatory aeration period is required after the tarp is removed. Your building should not be cleared for reoccupancy until it is safe for you to reenter.

**How Do You Know Whether You Are Exposed -** Methyl bromide is a colorless, odorless gas, so a warning agent is added which causes watery eyes and a scratchy throat. If you experience these symptoms in a building that has been recently fumigated, you should leave immediately and call the pest control company to have your building retested. You should also consult with your physician.

**Methyl Bromide Health Risks -** Methyl bromide enters your body as a gas when you breathe it. Exposure which may occur from touching treated surfaces is insignificant.

Nervous system, eyes, and respiratory irritations:

Overexposure to methyl bromide can cause blurred vision, headache, and nuusea. At higher concentrations, it can cause tremors, sleepiness, convulsions, pneumonia, and excess fluid in the lungs. These symptoms may not appear for 12 to 24 hours. If you experience these symptoms in a recently fumigated building, you should leave immediately and call the pest control company to have the building retested. You should also call your personal physician. Physicians are encouraged to report suspected pesticide-related illnesses to EPA.



Birth defects: In recent animal studies, methyl bromide caused birth defects when pregnant animals were exposed under experimental conditions. There is no evidence that methyl bromide affects human reproduction, although some chemicals which cause birth defects in animals may also cause birth defects in humans. Any person, including pregnant women, should avoid unnecessary exposure.

Other effects: It is not known whether long-term exposure to methyl bromide causes cancer. Experiments in animals are underway to study this, although tests so far are negative. However, even if methyl bromide were shown to cause cancer over a lifetime of exposure in animals, it is unlikely that your exposure from the one-time fumigation of your building would be high enough to cause a significant risk of cancer.

**Ways To Reduce Your Exposure If You Are Having Your Building Fumigated -**

- o Carefully evaluate all your pest control alternatives.
- o Talk over your treatment program in advance with the pest control company, so you fully understand what will be done, and what you need to do.
- o Carefully follow the instructions you are given about items you are to remove from your building.
- o Stay out of the treated building for at least three days after the tarp is removed. If you have additional concerns, you may choose to be away for an extra period of time after the building is cleared for reoccupation.

- o If you are interested or concerned, you can ask your pest control company to show you the records of the air monitoring it did before your building was cleared for reoccupation.
- o You may wish to increase ventilation by opening doors and windows.
- o If you have symptoms of exposure, or you believe that the aeration was not done properly, you should leave the building and contact the pest control company and your physician. You may also wish to call one of the phone numbers listed below.

For information about pesticides, the U.S. Environmental Protection Agency has a toll-free information service, the National Pesticide Telecommunications Network Hotline, which can be reached at 1 (800) 858-7378.

In a medical emergency, call 911, or contact the nearest Poison Control Center. See "Crisis Hotlines" listed near the front of the white pages in your phone book.

If you feel uncomfortable entering the structure, or if you do not fully understand the potential hazards, you should call the company that performed the fumigation:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
Telephone: \_\_\_\_\_

I acknowledge receiving a copy of this methyl bromide fact sheet. (You will sign one copy for the company doing the fumigation, and get a second copy to keep for later reference.)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please print your name here: \_\_\_\_\_

Your address: \_\_\_\_\_

FOR FUMIGATION OF RESIDENTIAL AND COMMERCIAL STRUCTURES, THESE DIRECTIONS SUPERSEDE ANY OTHER DIRECTIONS ON THE LABEL CONCERNING AERATION AND REENTRY

#### LABELING FOR END-USE PRODUCTS:

The label language for Fumigation of Residential and Commercial Structures: Aeration and Reentry would be the same as for manufacturing-use products except the introductory paragraph concerning formulation into end-use products would be omitted.

FIFRA COMPLIANCE PROGRAM POLICY No. 3.10

Use of California's Methyl Bromide Fact Sheet

FIFRA Section: 3

Issue:

Label directions for all Methyl Bromide products require that customers sign an EPA Fact Sheet before structural fumigation occurs. Through regulation the state of California requires a California fact sheet be signed. Will EPA allow California's Fact Sheet (revised May 1992) to be used in lieu of EPA's Fact Sheet for customer signature before fumigation in California?

Policy:

Upon review of both Fact Sheets, the Office of Pesticide Programs has determined that use of the California Fact Sheet (Revised May 1992) would be sufficient to meet the Agency's intent in notifying customers prior to beginning fumigation. At the request of the Office of Pesticide Programs, the Office of Compliance Monitoring will allow applicators in California only to use California's Fact Sheet (Revised May 1992) for customer signature in lieu of EPA's Fact Sheet for customer signature before the applicator starts the fumigation process.

Discussion:

Methyl Bromide registrants voluntarily agreed to a label revision of Methyl Bromide products with structural (commercial and residential) fumigation use directions on the label due to health concerns of structural fumigants. Methyl Bromide Registrants with structural fumigation uses on their product labels have revised their aeration and reentry directions according to the Interim Approved Labeling. A Federal requirement of the new, approved label language is that applicators give their customers a fact sheet for their review and signature before the fumigation process begins. In addition to this Federal requirement, the state of California has passed regulations requiring applicators in California to give their customers the California Fact Sheet for review and signature. Without this policy, both fact sheets are required to be presented to the customer and signed. The Office of Pesticide Programs has reviewed both fact sheets and have requested the Office of Compliance Monitoring to allow applicators in California only to use the California Fact Sheet (Revised May 1992) in lieu of both. The EPA Fact Sheet is required to be signed in all other states.

Attachment B

Products Affected by the Methyl Bromide Label Revision

Great Lakes Chemical Company

5785-4 Brom-O-Gas  
5785-7 Brom-O-Gas 1%  
5785-8 Brom-O-Gas 0.5%  
5785-42 Brom-O-Gas 2%  
5785-55 Brom-O-Gas 0.25%

Tri-Cal Inc.

11220-17 Methyl Bromide 98%

Soil Chemicals

\*8536-5 Pic-Brom 33  
\*8536-11 Pic-Brom 25  
8536-12 Methyl Bromide 99.5%  
8536-17 Methyl Bromide 99.75%  
8536-19 Methyl Bromide 98%

Shadow Mountain Products

58266-3 Trical Methyl Bromide 99.5%

Ameribrom Inc.

8622-17 Metabrom 99

Ethyl Corporation

3377-7 M-B-R-98

Reddick Fumigants Inc.

37733-5 Bro-Mean C-2R

- \* Structural fumigation use directions have been removed from the label while soil and greenhouse fumigation uses remain.

## Attachment C

### Customer Letter

Dear Customer:

Due to recent exposure data generated on methyl bromide structural fumigation, the United States Environmental Protection Agency (USEPA) is concerned that there may be a potential health risk for people reoccupying structures too soon following fumigation. Accordingly, the USEPA is requiring changes regarding methyl bromide fumigation of residential and commercial structures.

Our records indicate that you have purchased methyl bromide from (company name) in the past. This letter is to notify you that effective immediately the use directions for structural fumigation are changed to require longer aeration times before reentry is allowed following structural fumigation. Under the revised directions, the structure cannot be reoccupied until the methyl bromide level is below 3 ppm. In addition, the use directions now require applicators to provide owners and/or occupants of a building to which methyl bromide is applied with a copy of a Fact Sheet explaining more about the product. A signed copy of the Fact Sheet must be obtained from the owner/occupant at the time a contract is signed. Copies of these signed fact sheets should be kept along with your application records. A copy of the new use directions and Fact Sheet is enclosed.

We realize that the amended procedure will pose some additional burden to you. However, the label changes are mandated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and distribution or sale of a methyl bromide pesticide product for commercial or residential structural fumigation is prohibited after September 1, 1992 unless the labeling contains the revised use directions and Fact Sheet. We ask for your cooperation, and remind you that distribution or sale of this product after September 1, 1992 without the revised labeling is a violation of FIFRA § 12(a)(1)(E), and that use of this product in a manner inconsistent with the instructions in its labeling is a violation of FIFRA § 12(a)(2)(G).

Enclosure



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

OFFICE OF  
PESTICIDES AND TOXIC  
SUBSTANCES

APR 24 1991

**MEMORANDUM**

**SUBJECT:** Final FY 1992 Consolidated Pesticide Cooperative Agreement Guidance

**FROM:** Stephen L. Johnson, Director  
Field Operations Division  
Office of Pesticide Programs

John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring

**TO:** Regional Pesticides and Toxics Division Directors  
Regional Pesticides and Toxics Branch Chiefs

Attached is the final guidance for preparation of State pesticide cooperative agreements in FY 1992. The package includes the guidance and a complete set of appendices to the document.

Thank you for your comments on draft versions of the guidance and for facilitating State comment. Many comments were incorporated into the final guidance. However, others raised issues that could not be addressed through the guidance this year. We will retain all comments and attempt to address them through action items for further consideration.

A number of comments expressed concern with the implementation schedule for the Worker Protection Program. After further discussion with program staff, we have scheduled a longer lead time for dissemination of educational materials in the first phase of the program. However, the remaining schedule for implementing the program has not been changed because of the importance of completing these tasks within the stated time periods. We will make every effort to ensure that guidance and materials needed from Headquarters on the Worker Protection Program are available so that schedules can be met.



## **FY92 Consolidated Pesticide Cooperative Agreement Guidance**

Another section of concern to commentators was the proposal to move up the due dates for quarterly reporting under the cooperative agreements. Based on opposition to this proposal, reporting dates will remain the same as in previous years.

Included in this final guidance is a section on the Office of Compliance Monitoring's lawn care initiative. This section was sent separately for review by Regions and States, and the final language adopted reflects those comments. Several States reported that they have lawn care programs in place and that the activities proposed would be easily incorporated into current programs. We are asking for the support of the States with this initiative to gather systematic information about the use of lawn care products so that we can report to the General Accounting Office on our assessment of the need for a long-term lawn care enforcement strategy.

Finally, those Regions that issue Region-specific guidance are reminded to circulate draft guidance to their States for review and comment before finalization. Copies of final Regional guidance should be sent to the Office of Compliance Monitoring and to the Field Operations Division.

If you have any questions regarding the certification and/or the pesticide program sections of the guidance (pages 18-35), please contact Therese Murtagh, OPP Field Operations Division, on FTS 557-7410. Questions regarding the compliance sections of the guidance (pages 36-70) should be referred to Linda Flick, Office of Compliance Monitoring, on FTS 382-7841.

Again, thank you for your input to the guidance.

Attachment



## FY 92 CONSOLIDATED PESTICIDE COOPERATIVE AGREEMENT GUIDANCE

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## FY92 CONSOLIDATED PESTICIDE COOPERATIVE AGREEMENT GUIDANCE

### INTRODUCTION

#### A. PURPOSE OF GUIDANCE

Section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended authorizes the U.S. Environmental Protection Agency to enter into cooperative agreements with the states and Indian tribes for pesticides enforcement and to train and certify applicators. (Under FIFRA Section 2(aa), "the term 'state' means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and American Samoa.") Regulations governing financial assistance to participants in the cooperative pesticides program are found at 40 CFR Part 35.001 - 35.155, 35.600 - 35.605 and 40 CFR Part 31.1 to 31.6. This guidance document, developed by the Office of Compliance Monitoring (OCM) and the Office of Pesticide Programs (OPP), supplements the above regulations by setting forth in more detail the required elements of cooperative agreement applications, procedures for reviewing applications and awarding funding allotments, and guidance for program evaluation and management.

This document is specifically directed to the EPA regional offices, which are responsible for issuing program guidance to the applicants. Regional guidance to the states and Indian tribes must contain all the key provisions of the national guidance, including all work program items. However, the national guidance may be modified or supplemented to reflect special environmental or managerial conditions in each region. The regions should send to the Chief of OCM's Grants and Evaluation Branch a copy of the draft and final guidance which they send to their states, assuming that it is not identical to the national guidance; a copy should be sent at the same time as the mailing to the states.

For FY 92, this document was developed as a "Consolidated Cooperative Agreement Guidance" covering all pesticide activities for which financial aid will be available. These activities are categorized in the following five components of the pesticide cooperative agreement program: 1) all of the enforcement activities; 2) certification of pesticide applicators; 3) ground water program activities; 4) endangered species program activities; and 5) worker protection program activities. (Components # 2-5 are considered "pesticide program activities".)

In relation to above, the enforcement funds will be available for the enforcement component, certification funds will be available for the certification component and distinct pesticide program funds will be available for worker protection program activities, ground water program activities and endangered species program activities.

Section II of the consolidated guidance discusses application requirements which apply to all components of the pesticide cooperative agreement program. The remaining sections deal with work program activities, and specifically address each of the five individual components outlined previously. The funding section cannot be distributed until after the President's FY 92 budget is released.

The consolidated guidance was developed, in part, to encourage states to prepare one cooperative agreement application for assistance for all components (enforcement, certification, worker protection program, ground water program and endangered species program activities). However, it is recognized that due to unique circumstances or timing, this will not be feasible in every case. The guidance allows for the state lead agency/tribe to submit more than one application or amended applications to address the five components, if this is more practical, as agreed between the applicant and EPA regional office.

In submitting a consolidated cooperative agreement application, the applicant must submit three budgets at a minimum: 1) one for the enforcement component (including worker protection enforcement activities and all the enforcement activities); 2) one budget for the certification component; and 3) one budget for the pesticide program activities (addressing the groundwater, endangered species and worker protection program activities together).

Under the consolidated cooperative agreement, the recipient must separately track the expenditure of funds under three components at a minimum: 1) all of the enforcement funds; 2) the certification funds; and 3) the pesticide program funds for the new initiatives (groundwater program activities, endangered species program activities and worker protection program activities).

The regions and states are strongly encouraged to read through the first 64 pages (sections I-IV) of the guidance. We have highlighted the major changes from the FY 91 guidance.

## B. NATIONAL PRIORITIES

**Note:** This is a new section of the introduction. This information was previously included in the work program section.

## **1. ENFORCEMENT NATIONAL PRIORITIES**

In developing the compliance cooperative agreement work programs, applicants need to address the national pesticide enforcement priorities, along with State/Tribal priorities. For FY 92, the two national priorities are: A) helping to ensure compliance with pesticide cancellations, suspensions and other major regulatory actions; and B) planning for and conducting enforcement activities for the revised worker protection standards and associated labeling requirements, based on publication of the final rule.

## **2. CERTIFICATION AND TRAINING OF PESTICIDE APPLICATOR – NATIONAL PRIORITIES**

a. **Program Goals.** In FY92, the Agency will work with the states/tribes to address the changes to certification plans which will be required as a result of revised provisions in the regulations concerning "Certification of Pesticide Applicators," 40 CFR 171. The revisions to 40 CFR 171 should be final and in effect in FY92. Working with USDA and others, EPA will develop new training modules and upgrade training materials to assist in meeting the more stringent pesticide applicator competency standards contained in the revised regulations.

b. **National Program Priorities.** In the area of certification and training of pesticide applicators, the Agency has identified five program areas for priority activities in FY92 at the national and/or regional levels. These activities will be undertaken in cooperation with the states, tribes, territories, and with USDA:

### **1. Encourage Interaction between State Agencies and Cooperative Extension Services in the States**

EPA will continue to encourage frequent interaction between the Lead Agency for pesticide programs and Cooperative Extension Service in each State, particularly where the training offered by the Extension Service is a means of obtaining certification or recertification credit.

### **2. Training**

EPA will address state/tribal needs in the area of training material. EPA will continue to work with USDA to identify needed training programs and materials and to develop these programs and materials at the national level, and facilitate such development at the regional and state level, as appropriate.

EPA will cooperate with the private sector to encourage development of training materials.

EPA will encourage states/tribes and facilitate their efforts to ensure that training is made available to applicators in situations where the state/tribe itself cannot offer training.

EPA will continue to develop train-the-trainer programs that address new regulations, emerging issues, and innovative C&T materials.

EPA will encourage and assist in the development of methods/programs for verifying that training has occurred in cases where the state/tribe itself does not administer the training.

EPA will continue to cooperate with USDA to upgrade state private applicator training programs and certification mechanisms based on the Joint EPA-USDA/CBS reviews which were completed in FY 89.

**3. Publication of Revised Federal Regulations**

EPA will promulgate, in FY 92, revised regulations for the certification of pesticide applicators.

**4. State Certification Programs**

EPA will encourage states/tribes to maintain their state/tribal plans, in accordance with FIFRA Section 11 and 40 CFR 171. When the revised regulations are promulgated, EPA will assist in the transition from existing certification programs to programs that meet the requirements of the regulations.

**5. Cooperation and Interaction**

EPA will facilitate cooperation and interaction between federal and state/tribal agencies for identifying emerging issues, and in developing and implementing state/tribal and regional programs to address those issues.

### **3. GROUND WATER PROTECTION PROGRAM – NATIONAL PRIORITIES**

a. **Program Goals.** EPA's environmental goal in its Pesticides and Ground Water Strategy is to manage the use of pesticides to protect ground water resources. The strategy provides states, tribes, and territories the opportunity to take the lead role in meeting this goal by designing and implementing plans to manage pesticides for the prevention of ground water contamination. This approach allows for the tailoring of pesticide management measures to meet specific local ground water protection needs.

Resources devoted to protecting ground water from pesticide contamination will be focused on those areas that have the most serious agrochemicals in ground water problems or with the potential for such problems. The Regional Program Offices will provide technical assistance to states, tribes and territories on pesticide management plan development and review of state and tribe management plans, ensuring cooperation among key state/ tribal agencies, sharing information and reviewing grant plans.

Protection of ground water requires a localized protection approach which require a greatly expanded/strengthened state/tribe role in problem identification and in the management of pesticide use with a focus on prevention of contamination.

At the regional level, the pesticides, ground water and non-point source programs will need to work closely together to develop consistent state and tribal work plans to support program specific grants. At the state and tribal level, there is the same need for cooperation and coordination between involved agencies.

b. **National Program Priorities.** In the area of ground water protection, the Agency has identified program areas for priority activities in FY92 at the national and/or regional levels. These activities will be undertaken in cooperation with the states, tribes, territories, and with USDA and USGS:

#### **1. Implementation of the Final Management Plan Guidance Document and Technical Support Documents**

EPA will provide guidance to states, tribes, and territories in their efforts to develop management plans and to promote national consistency in using these plans as a key element of the foundation for pesticide registrations. EPA also will provide technical assistance to those preparing to develop management plans.

**2. Oversee the Development and Implementation of Both Generic and Chemical-Specific State Management Plans**

EPA will develop plans to strengthen the Agency's foundation for the Federal registration of pesticides posing ground water contamination concerns. These plans should be developed in close coordination with state ground water programs. The EPA Office of Ground Water Protection (OGWP) also is providing funds to state/tribal ground water programs for the development of pesticide management plans.

**3. Resolution of Organizational Roles and Responsibilities with Respect to OPP, ODW, OGWP, USDA, and USGS**

EPA will foster communication and harmony among these organizations and their regional/state counterparts. With respect to the Office of Ground Water Protection (OGWP), the Comprehensive State Ground Water Protection Programs (CSGWPP's) will be the vehicle for addressing organizational roles and responsibilities. EPA will develop and implement MOUs with USGS and USDA (Soil Conservation Service, Cooperative Extension Service, Agricultural Research Service, and Cooperative States Research Service).

**4. Review of Management Practices**

EPA will facilitate the transfer of technology among states, tribes, and territories. EPA will determine what is and is not working and share that information with those in similar situations.

**5. Outreach to Pesticide Users and the Public**

EPA will develop public information materials such as brochures, fact sheets, and audio-visual materials to aid in outreach.

**4. ENDANGERED SPECIES PROTECTION PROGRAM - NATIONAL PRIORITIES**

**a. Program Goals.** The Endangered Species Protection Program focuses on providing the best protection for listed species while minimizing any unnecessary impacts on pesticide users. During the 1992 growing season, OPP anticipates the continuation of the voluntary and pilot programs begun in 1990 and 1991.



During FY92, the Agency will begin requiring registrants to relabel some products with endangered species precautions and reference to county-specific bulletins to conform with the Endangered Species program. Because approximately twelve months will be allowed for relabeling, few products at the end-use level will bear the revised labeling during the 1992 growing season.

The Regions' focus will be on providing technical assistance to the states/tribes. This assistance will include coordinating the review of habitat maps with the states and other interested parties, ensuring coordination between State agriculture and fish/game agencies, and reviewing State plans.

b. National Program Priorities. In the area of endangered species protection, the Agency has identified program areas for priority activities in FY92 at the National and/or regional levels. These activities will be undertaken in cooperation with the states, tribes, territories, and with USDA:

**1. Voluntary Programs Including Pilot Programs**

EPA will assist with on-going pilot programs and work to establish new pilot programs in the states/tribes during the 1992 growing season. Results from the pilot programs will be used to revise the Endangered Species Protection Program as necessary.

**2. Customized State-Initiated Plans**

Through the Regional Offices, EPA will provide technical assistance to states/tribes developing their own state/tribe-initiated plans. Regions will participate in the first level of review for state/tribe-initiated plans. EPA Headquarters will assist in reviewing state/tribe-initiated plans submitted through the Regions, and in obtaining concurrence from the Fish and Wildlife Services (FWS).

**3. Outreach to Pesticide Users and the Public**

EPA will develop educational materials for use in the field as well as to inform the public about the Endangered Species Protection Program.

EPA will provide program informational materials (including bulletins, brochures, fact sheets, videos/slides) to the Cooperative Extension Service, Regional Offices, etc., as these materials are developed by EPA.

#### **4. Coordination with the Federal and State Lead Agencies**

EPA will promote cooperation with other Federal and state/tribal agencies including USDA, FWS, Regional Office, State Agriculture and Fish and Game departments. This cooperation will result in (a) the development of educational materials and habitat maps, (b) review of program outreach activities, and (c) the development of technical aspects of the program.

#### **5. Review of Habitat Maps**

Through the Regions, EPA will coordinate the review of habitat maps with the states and other interested parties.

### **5. WORKER PROTECTION PROGRAM – NATIONAL PRIORITIES**

**a. Program Goals.** In FY92, the Agency goal will be to disseminate information on the new Worker Protection Standards (WPS) and to continue to develop and disseminate training materials required by the program.

Successful implementation of the WPS and related product label changes will require continued public outreach to inform workers and employers about requirements that will be initiated in FY91. The complexity of reaching so many groups and individuals requires a decentralized Federal program. Training materials and technical assistance will be directed through regional and state/tribes programs to tailor them to local conditions and programs.

The pesticides worker protection compliance monitoring and enforcement activities will focus on ensuring compliance with the pesticide worker protection rule, through routine comprehensive inspections, and follow-up to incidents and complaint reports. Training seminars for states and technical assistance for public and private groups will also be an important part of compliance monitoring and enforcement efforts.

**b. National Program Priorities.** In the area of worker protection, EPA has identified program areas for priority activities in FY92 at the national and/or regional levels. These activities will be undertaken in cooperation with the states, tribes, territories, and with USDA:

1. **Continued Development of Program Implementation Strategies by the States, Tribes, and Territories**

EPA, through the regions, will provide information and assistance for finalizing individual worker protection program implementation strategies for states, tribes, and territories.

2. **Outreach to Pesticide Users and Workers Potentially Exposed to Pesticides**

To assist the state, tribes, and territories in their outreach programs, EPA will provide information on the WPS to the regulated and affected communities. These communities will be identified in individual worker protection program implementation strategies. EPA will develop materials to inform users of the new WPS requirements. Headquarters will facilitate regional interaction through informational meetings and workshops.

3. **Coordination of Activities with the States, Tribes, and Other Agencies and Organizations**

EPA will promote cooperation between USDA, OSHA, the Cooperative Extension Services, and the private sector in the development of educational materials and dissemination of information and training efforts. EPA encourages states/tribes to include groups/coalitions representing migrant workers when naming organizations to work with in implementing Worker Protection Standards (i.e., utilize organizations representing or concerned with migrant issues). EPA will also promote cooperation between states and tribes.

4. **Publicizing the Worker Protection Program**

EPA will develop materials, such as brochures, fact sheets, and guides, for informing the public of the new WPS. EPA, through the regions, will also use the media to announce the WPS and inform the public of its requirements.

5. **Management of Cooperative Agreements with the States, Tribes, and Territories for the WPS**

EPA will review the focus and progress of the FY92 Pesticide Cooperative Agreements. Improvements and corrections will be suggested, as necessary.

Head-quarters, through the Regional Program Offices, will issue and transmit guidance to the states/tribes.

## 6. Training Programs and Materials

EPA will develop a national set of guidance documents on basic occupational safety that meets the minimum requirements set out in the WPS. Then, in cooperation with the private sector and other state agencies (the Cooperative Extension Service, OSHA), EPA will help states, tribes, and territories tailor programs and materials to meet specific needs.

Using EPA/state/tribe/employer "train-the-trainer" type programs, EPA will also prepare persons who can offer training or distribute information about the WPS.

## II. COOPERATIVE AGREEMENT APPLICATION REQUIREMENTS

To ensure an orderly administrative review, programmatic evaluation, and funding of cooperative agreement applications, the applications must be received by the regional Grants Management Offices at least 60 days prior to the beginning of the proposed budget period. This is a federal requirement which must be adhered to in accordance with 40 CFR Part 35.140. This requirement may be addressed in any audits conducted of a state/tribal cooperative agreement program.

We recommend that states/tribes operating pesticide enforcement grant programs under the Federal fiscal year cycle (October 1 - September 30) submit their cooperative agreement application 90 days prior to the beginning of the proposed budget period. This will allow additional lead time and help to avoid cooperative agreements not being awarded on time. Funds will be awarded as promptly as possible following release of FY 92 federal funds.

For FY 92, applicants for pesticide enforcement cooperative agreement funds are urged to complete and submit an enforcement application review checklist with their applications; this checklist is provided in appendix V. The checklist will aid the applicant in submitting a complete package and help to streamline processing.

In accordance with 40 CFR Part 35.141, 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 state prior to the expiration of the prior budget period. If applications for continuation awards are not received in a timely manner, it will be

necessary to request a formal deviation request approved by the Grants Administration Division before any pre-award costs may be approved.

In addition to this guidance document, regional and state/tribal staff 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, previously distributed, when preparing, negotiating, and evaluating cooperative agreement applications.

Listed below are the principal elements needed in an application to enable EPA to perform a proper review and evaluation of the proposed program and to make a timely award of funds. The outline below is a suggested format for applications.

#### **A. STANDARD APPLICATION FORMS**

The regulations (40 CFR Part 31.10) require applicants for assistance to use Standard Form 424 (revised 4/88). Application kits including all the necessary application forms, may be obtained from the EPA regional Grants Management Office. (A copy of the application form can also be found in appendix I of this guidance.)

It is recommended that applicants submit one consolidated application, for EPA review and approval, with a distinct work program component for each of the five activities (namely enforcement, certification, worker protection program activities, endangered species, and groundwater program activities).

If submitting one application is not feasible, the state lead agency/tribe may submit separate or amended applications which address each component for which funding is available as described in this document.

In submitting a consolidated cooperative agreement application, for EPA review and approval, the applicant must submit three budgets at a minimum: 1) one for the enforcement component (including worker protection enforcement activities and all the enforcement activities); 2) one budget for the certification component; and 3) one budget for the pesticide program activities (addressing the groundwater, endangered species and worker protection program activities together). (Appendix IX includes an example of a partially completed application form showing how at least three individual budget components could be entered on one application form SF 424.)

## **B. BUDGET REQUIREMENTS**

### **1. Cost Sharing**

#### **a. Enforcement Component**

EPA's share of the "total project costs" for the FIFRA enforcement component should not exceed 85% of the total funding level.

#### **b. Certification Component**

FIFRA Section 23 limits EPA's share of the "total project costs" to not more than 50% of the total funding level.

#### **c. Pesticide Program Component (Addressing Worker Protection Program Activities, Groundwater Program Activities and Endangered Species Program Activities)**

EPA's share of the "total project costs" for the worker protection program activities, groundwater program and endangered species program activities should not exceed 85% of the total funding level.

### **2. Itemized Budget Detail**

The applicant should include supportive itemized statements or fact sheets to expand upon the expenditures proposed for at least each of the three components (namely enforcement, certification, and pesticide program activities) for the cost categories listed below. Any additional cost categories that may appear to be out of the ordinary should be itemized, as well.

#### **a. Personnel**

Personnel costs should be itemized to show the type of work activity, number of persons involved, number of work years involved and the total cost for each of the major categories of personnel (e.g., inspectional, analytical, etc.) for which funding is requested.

#### **b. Travel**

Travel costs must be adequately described to show the basis for the total travel cost estimate.

### **c. Equipment and Supplies**

Each item costing \$25,000 or more should be listed separately. Items costing less than \$25,000 may be grouped, as appropriate.

## **C. NARRATIVE STATEMENT**

Each cooperative agreement application must be accompanied by a narrative statement covering the subject areas listed below (addressing background information, ability to implement the program, objectives of the project, benefits of the project to the applicant and EPA, and the work program). If a subject has been adequately documented in previous applications, project reports, etc., a reference to the earlier document will suffice, as long as the pertinent pages of the earlier document are attached.

A new work program narrative for each component, for review and approval, must be submitted annually along with the application. With changing conditions and priorities (both nationally and locally), it is expected that work program activities will change from year-to-year.

### **1. Background**

40 CFR Part 35.140 requires all applications to include a discussion of performance to date under the existing award.

### **2. Ability to Implement Program**

Each applicant must certify that there are no impediments to the state's/tribe's ability to carry out the proposed program or programs. Applicants with continuing cooperative agreement programs are not required to annually certify their ability to carry out the proposed programs, unless one or more of the areas described below has changed. The applicant should address the areas described below, as well as any others, which might pose problems.

#### **a. Authority to Conduct the Proposed Program**

##### **State Authority**

The state must have enacted legislation which empowers it to enter into a cooperative agreement with EPA and conduct specific activities proposed under the cooperative agreement.

**Tribal Authority**

The tribe must have established a governmental body to execute a cooperative agreement with EPA. Most reservations are covered by tribal governments, recognized by the Department of the Interior in the Federal Register and organized pursuant to treaties and/or Acts of Congress.

**b. Authority to Accept Federal Funds**

A state/tribe, which can only implement a program under a cooperative agreement with prior authorization by its legislature to spend federal funds, must include a statement indicating the date on which such authorization will be obtained. Commitment of EPA funds will be contingent upon such authorization by the state legislature or Tribal Council.

**c. Designation of Lead Agency for Enforcement**

Although several agencies within a state/tribe may be responsible for regulating various aspects of pesticide manufacture, handling, and use, EPA will continue to enter into only one cooperative agreement with the state/tribe for pesticides enforcement, as has been done in the past. It is a necessity for a coordinated enforcement program for this practice to continue.

The Governor of the state or the Tribal Chairman (or equivalent), through a letter to the regional office, should designate a lead agency which will be responsible for the cooperative enforcement agreement program. The designated lead agency must have the authority to enter into contracts or interagency agreements with other agencies for the performance of all necessary activities. The lead agency must follow through on their "lead" responsibilities, as outlined in the work program section of this guidance document, as the recipient of cooperative agreement funds.

**3. Objectives of the Project**

Each applicant should clearly define the principal objectives which support the achievement of the national and individual state/tribal priorities.

**4. Benefits of Project to the Applicant and EPA**

The applicant must identify expected results and benefits to be derived from the project, including all primary and secondary benefits to the applicant. This statement should clearly establish the project as a cooperative agreement with benefits accruing to both the applicant and EPA.



## **5. Work Program**

The applicant must develop, for EPA review and approval, a proposed work program for each component including a narrative description of the projected outputs and work to be accomplished, along with a schedule for accomplishing these activities. The cooperative agreement work programs for each component are discussed in sections III and IV.

Additionally, while developing the work program, the applicant should identify and consider the concerns of persons in the state/tribe who may be exposed to pesticides or otherwise affected by the pesticides enforcement program. The EPA considers public participation in the planning process to be an important element of the program. Each applicant may use a variety of means to identify the concerns of the public and involve the public in the planning process. As a reference, applicants may wish to use EPA's Public Participation Policy, January 19, 1981, 46 Fed. Reg. 5736, (included in appendix X). This policy discusses the following factors: outreach, dialogue, assimilation, feedback and associated methods.

### **D. ACCOUNTABILITY UNDER THE COOPERATIVE AGREEMENT**

According to 40 CFR Part 31.20, recipients must expend and account for funds awarded in accordance with state/tribal laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures must be sufficient to: 1) track the expenditure of funds separately for at least each of three components (enforcement, certification, and pesticide program activities) of a consolidated pesticide agreement; 2) permit preparation of Financial Status Reports (FSRs) 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.

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

### **E. REQUIRED CERTIFICATION FOR DRUG FREE WORK PLACE**

On May 25, 1990, the Office of Management and Budget published "Drug-Free Workplace Requirements; Notice and Final Rules." For EPA, this new rule is included in 40 CFR Part 32 (See appendix XII), Government Debarment and Suspension

(Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants). This rule was effective July 24, 1990 except for the certification requirements of section 32.630(c) and (d) for states and state agencies which was effective on June 25, 1990. The rule requires all recipients to certify that they will maintain a drug-free workplace. The regional Grants Office must make sure that each application includes a properly executed certification. The rule provides for suspension of payments, suspension or termination of grants, or suspension or debarment of the recipient for violation of the rule.

#### **F. CERTIFICATION CONCERNING AND DISCLOSURE OF "INFLUENCING ACTIVITIES"**

**Note:** This is not a new requirement, but it is a revision to the guidance.

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

#### **G. DEBARMENT AND SUSPENSION CERTIFICATION**

**Note:** This is not a new requirement, but it is a revision to the guidance.

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

#### **H. STATE APPLICATION REVIEW CHECKLIST, REGIONAL REVIEW PROCEDURES AND SEMI-ANNUAL EVALUATIONS**

The responsibilities and requirements associated with application review procedures and semi-annual evaluations are discussed in Appendices III and IV respectively. The national evaluation protocol is being updated in FY 91 to reflect changes in the grant guidance, increased emphasis on follow-up to compliance monitoring strategies, findings from recent audits of the state enforcement grant program, and pertinent findings from the National Qualitative Review of the FY 89 Pesticide Enforcement Cooperative

**Agreement Program.** The protocol will be circulated to the EPA regions for comment prior to being finalized. Some highlights in the application review process are discussed below.

**State application checklist:** For FY 92, the pesticide enforcement applicant may wish to complete a cooperative agreement application review checklist (in appendix V) and submit it along with the application for enforcement cooperative agreement funds. This should help ensure that the applications address all of the required enforcement work program elements and reduce the number of comments on the applications by EPA. (Regions may revise or add to this checklist.)

**Regional review and submittal of applications:** When state applications are submitted, regions should review the checklist, if provided, and the application to ensure all of the required elements have been addressed. (A suggested review checklist for regional use appears in appendix VII). The enforcement applications should be sent by the regions to the appropriate regional liaison in OCM's Grants and Evaluation Branch within two weeks of the region's receipt of the documents. This allows for OCM review and comment early in the negotiation of a final agreement. (If they are available, any comments from the regions on the applications should also be included. Checklists may also be sent along with the application).

OCM'S Grants and Evaluation Branch will review a representative number of the enforcement applications from all regions in order to: 1) help ensure national consistency and adherence, as appropriate, to the national guidance; 2) assist in ensuring that recurring comments made in recent Inspector General audits are addressed from the national perspective; we fully expect that follow-up audits may occur; and finally, 3) remain aware of what the states and tribes are actually proposing to do under their enforcement agreement and help identify areas for next year's guidance which need to be revised in order to address consistent problems if any. Such knowledge and awareness is essential to developing and updating this guidance. If OCM has any comments they will be relayed via telephone or in writing. Comments from the regions or HQ should be reduced for the states and tribes completing checklists themselves to identify gaps in their applications.

Additional aids to processing applications are provided in the appendix. Appendix VII is the suggested regional review checklist. This checklist may be used instead of or to supplement a checklist submitted by the applicant. In addition, a one-page time line/chart is found in appendix VI. Regions may choose to adapt the time line for tracking due dates in the grant award process.

### **III. PESTICIDE PROGRAM ACTIVITIES FOR THE FY 92 WORK PROGRAM**

**Note: The format of this section was revised from the last draft.**

#### **A. INTRODUCTION**

##### **1. General**

For FY92, program development in the new pesticide initiatives will continue. Pesticide applicator certification programs, that have been in place in the States for several years, will be updated and maintained.

##### **2. Work Program Components**

Each state/tribe applying for FY92 pesticide program cooperative agreement funds must prepare a proposed work program that includes the following five components, at a minimum:

- a. A description of the work, as outlined in the specific sections on work program activities in this chapter of the grant guidance
- b. A schedule for accomplishing the work program activities
- c. Reporting
- d. Accounting records and filing system
- e. Evaluation plans

##### **3. Program Flexibility**

EPA recognizes that the states/tribes will be designing programs particular to specific concerns in their areas, and work programs may vary from State to State.

The guidance for the new initiatives may lack some degree of specificity by design, to allow the states/tribes flexibility in developing their programs and to allow for states/tribes that have progressed further in some of these areas as well as those who are in the initial stages of addressing them.

#### **4. Cooperation Between States/Tribes and the EPA Regional Offices**

The state/tribe and the Regional Program Office should work closely together to develop complementary EPA/state or EPA/tribal pesticide programs, especially as they address the new initiatives. Cooperation between EPA and the applicants is essential in developing effective programs. Discussions between the states/tribes and the Regional Program Offices with regard to priorities, planning and the extent of different program activities to be conducted are particularly important.

#### **5. Renegotiation of Work Programs for Program Initiatives**

Since the new program initiatives are in developmental stages, the guidelines set by EPA for these activities may change during the year. There can be a renegotiation of the work program for ground water, endangered species, and worker protection program activities after regulations or guidelines are issued in final form. The Regional Program Office will work with the states/tribes to determine if there is a need to change the specifications of the work program after final regulations or strategies are available.

### **B. CERTIFICATION AND TRAINING OF PESTICIDE APPLICATORS – WORK PROGRAM ACTIVITIES**

#### **1. Introduction**

Seven core elements are needed in the applicant's work plan. These elements are described below. The work program elements should be prioritized based on discussions with the EPA Regional Program Office.

#### **2. Work Program Requirements**

##### **a. Revisions to State Mechanisms for Certification**

The State will implement revisions to State mechanisms for certification (including examinations, training sessions and/or self-study packets if applicable) as previously agreed upon between the EPA project officer and the State. This effort also applies to any revisions agreed upon as a result of the FY 88/89 joint reviews, but not fully implemented by FY 91.

The State Lead Agency (SLA) should provide oversight and assistance as appropriate in implementing changes to training programs which were discussed as a result of joint reviews, and the SLA should cooperate with the

State Cooperative Extension Service (SCES) in implementing required changes to certification mechanisms as a consequence of such training changes.

**b. Implementation of Changes to State Certification Programs**

The State will implement any remaining changes to State certification programs/plans which were agreed upon between the State and EPA as a result of the FY 87 and subsequent discussions on State Certification Plans. (These changes should have been implemented or should be implemented according to a schedule agreed upon and approved by the EPA Regional Program Office and the State.)

**c. Review by the EPA Regional Program Office of Revisions of Certification/Recertification Examinations**

Revisions to state/tribal certification/recertification examinations will include review by the EPA Regional Program Office to assure that, in addition to the other topics required by federal regulations, the exams include information on: 1) chronic health effects; 2) ground water contamination; 3) endangered species; 4) disposal methods; 5) calibration of dispersal equipment; 6) proper use, maintenance and disposal of personal protective equipment and clothing; 7) applicator laws and responsibilities; 8) significant pesticide use problems identified through enforcement actions. When the EPA identifies areas in the examinations that need amendment, the State will work with EPA to make needed changes.

**d. Meetings with the State Cooperative Extension Service**

States/tribes must meet a minimum of twice each year with the state Cooperative Extension Service to discuss and evaluate the state/tribal pesticide applicator certification and training program. EPA Regional Program Offices should be notified of meetings in advance. At least twice a year, states/tribes will submit a report of points of agreement and decisions to the EPA Regional Program Office. These reports may be submitted by states/tribes with their mid-year reports and end-of-year reports.

**e. Reporting of Certification and Training Projections and Accomplishments on EPA Form 5700-33H**

On a semi-annual basis, the state/tribe will submit information on the number of training sessions participated in or monitored and the number of applicators certified and recertified (including the numbers certified and recertified for each category).

These reports showing certification accomplishments should be submitted by the State within 30 calendar days following the completion of the Federal fiscal year, second and fourth quarters. Semiannual reports are due April 30 and October 30 of each year. The end of year Form 5700-33H should include the number of applicators holding valid certification as of September 30, and the recertification period, in years, for each commercial category.

For Regions encompassing States that operate on a fiscal year that is different from the Federal fiscal year (e. g. July 1 - June 30 vs. October 1 - September 30), States must provide most current reporting data available at the time required reports are due.

In addition, the States are required under 40 CFR Part 171.7(d) to submit an annual report at a time to be specified by the State. The State may choose to have an annual State Plan report period that corresponds to their cooperative agreement budget period.

The states/tribes may consider using completed EPA Forms 5700-33H as part of their State Plan reports because the data reported on Form 5700-33H are the same as the first three items required in State Plan annual reports. This can be done only when the State chooses to have an annual State Plan report period that corresponds to their cooperative agreement budget period.

**F. Information About High Quality Training Programs and Training Materials; Information about Training Needs**

**The EPA and USDA are working together to ensure maximum program utility in the area of training materials. To assist in this effort, states/tribes are asked to include the following information in mid- and end-of-year reports:**

- o State/tribes will provide information about specific training programs and/or training materials identified as being of high quality.**
- o When states/tribes are involved in development of training programs and/or materials, a detailed description of these programs and/or materials will be included in reports.**
- o States/tribes are asked to identify specific programs and/or materials needed for the training of certified applicators in the state/tribe.**

**g. State/Tribal Specific Activities**

The State/Tribal work program will address any unresolved problem areas identified in mid-year and end-of-year evaluation reports of current and past project periods.

**h. State/Tribal Plan for Implementing the Revised 40 CFR 171**

The proposed revised certification and training regulation, 40 CFR Part 171, was published as a notice of proposed rule making in the Federal Register on November 7, 1990. The final regulation is scheduled for publication in FY 92. States/tribes will compare their FY92 C&T requirements with the proposed Federal regulation to identify changes that will be needed to implement the regulation. Within six months after the revised 40 CFR 171 becomes final, States/Tribes will submit a plan and schedule to implement the changes in Part 171.

**C. GROUND WATER PROTECTION PROGRAM – WORK PROGRAM ACTIVITIES**

**1. Introduction**

The Regional Program Offices and the states/tribes need to work together to utilize funds effectively in developing programs. The flexibility needed to implement priority tasks such as those identified by the Comprehensive State Ground Water Protection Programs, as well as the flexibility provided in this guidance, should allow for a degree of creativity and uniqueness in designing ground water protection programs. Where States/Tribes have already completed some/all of these work goals, new or expanded work goals can be negotiated.



## **2. The Work Program**

### **a. Establishing a State/Tribal Ground Water Protection Program Schedule**

For FY92, the State/Tribe will develop a program schedule for accomplishing the work program activities described in this section. The state/tribe and the Regional Program Office must agree upon a work program schedule.

Work toward completion of these activities will be pursued in FY92 according to the established schedule. Completion of the work on all components may not occur in FY92, owing to the complexity of certain activities.

### **b. Work Program Requirements**

#### **1. Completion of the Ground Water Protection Program Implementation Plan**

The state/tribe will complete the implementation plan for ground water protection. The state/tribe will submit the implementation plan to the Regional Program Office according to the established ground water protection program schedule.

The implementation plan will include the following components:

- a. An outline of how states/tribes will accomplish the provision and/or requirements of the EPA Pesticides and Ground Water Strategy pending the receipt of final guidance documents from EPA**
- b. A framework for conducting ground water activities, including whether the state/tribe will opt to develop a generic state management plan or chemical-specific management plans**
- c. An estimated time line for the development of either type of plan within EPA guidelines**
- d. A description of preparations for communicating the strategy to users and to the public, such as identifying target audiences, establishing mechanisms for the dissemination of information, and conducting public meetings**

- e. A description of plans to develop appropriate infrastructures, and/or memoranda of understanding with other State agencies
- f. A description of preliminary monitoring
- g. A description of any other preliminary activities that should be undertaken to prepare for implementing the strategy

## **2. Implementation**

After approval of the implementation plan and schedule by the EPA Regional Program Office, the state/tribe will initiate the activities defined in the plan.

## **3. Development of Generic Management Plans**

States/tribes opting to develop a generic state management plan in their implementation plan should begin work on the various generic components. EPA strongly encourages states/tribes to develop generic management plans and to submit them for review and preliminary approval prior to the 1992 use season. Generic plans would contain the basic components common to all management plans and could then be modified and expanded to address management of specific pesticides. A copy of the generic management plan should be submitted to the EPA Regional Office according to ground water protection program schedule.

## **4. Assessment and Identification of Areas Most Vulnerable to Ground Water Contamination by Pesticides**

The state/tribe will begin to assess and identify the areas most vulnerable to ground water contamination by pesticides in the State or within tribal lands. This effort may require monitoring and mapping activities, and may also require coordination with other State agencies and/or the development of statutory authorities which may not currently be in place to carry out these activities. A portion of cooperative agreement funds, as agreed upon with the Regional Program Office, can be used toward these efforts, and the development should occur according to an agreed upon schedule with the Regional Program Office.

To the extent possible, the state/tribe will identify those aquifers where protection is most critical based on available criteria, which may include use, proximity to the surface, well location, population density, etc. Vulnerability may also be dependent upon climate, type of soil, extent of irrigation, range in pesticide type and application rates, point source contamination and other factors.

**5. Outreach Activities**

The state/tribe will conduct an outreach campaign to explain to users and to the public how the EPA ground water strategy affects them, how the strategy works, what the state/tribe is doing to respond to the strategy, and how they may be involved.

**6. Development of Chemical-Specific Management Plan Components**

The state/tribe will develop the chemical-specific components (for those developing generic management plans) or a chemical-specific management plan in response to designation from EPA regarding a particular pesticide. The chemical-specific management plan or components should be developed and submitted to the EPA Regional Program Office on a case-by-case basis as specified by EPA, and according to the state/tribal ground water protection program schedule.

**7. State/Tribe Developed Projects**

States/tribes/tribal consortia are encouraged to propose an expanded work program in cases where the state/tribe/tribal consortia has an active ground water protection program and has already addressed many of the other work program requirements. Again, the flexibility provided in the guidance allows for creativity and uniqueness in the design of ground water protection programs.

**D. ENDANGERED SPECIES PROTECTION PROGRAM – WORK PROGRAM ACTIVITIES**

**1. Introduction**

The Regional Program Offices and states/tribes need to work together to utilize funds to develop state/tribal specific programs, whether the State/Tribe

is participating in a pilot or devising its own plan/procedures. The flexibility provided in this guidance should allow for a degree of creativity and uniqueness in designing state/tribal programs.

## **2. Work Program Requirements**

### **a. General**

Where states have already completed some or all of the work goals described in this section, new or expanded work goals should be negotiated. All activities in the work program should be prioritized within each state/tribe based on discussions with the EPA Regional Program Office.

### **b. Work Programs for Base Programs**

States/tribes participating in a base endangered species protection program are eligible to receive the base allocation. The base work program must outline how the state/tribe will address the following activities, to the extent of the resources available:

#### **1. Information Response System**

The state/tribe will develop a framework for an information response system which will be used to disseminate EPA-developed educational materials, such as maps, bulletins, and fact sheets, to individuals and groups affected by the program and in response to public inquiries.

Suggested components for the information response system are:

- a. A telephone information service for agricultural and home pesticide users**
- b. State/tribal development and dissemination of public outreach materials where needed to deal with particular local situations**
- c. State/tribal solicitation of public comment on review maps and pesticide tables**

**2. Compilation/Dissemination of Information on Federally-Listed Endangered Species**

The work program will also address the following activities concerning Federally-listed endangered species:

- a. Habitat identification
- b. Mapping of endangered species habitats
- c. Disseminating information regarding newly-identified/listed species

This activity may include the review of habitat maps to ensure that they provide accurate descriptions of where endangered species must be protected and an on-going collection of information for map development and revision as well as information on pesticide use by county.

**c. Additional Work Program Activities**

**1. General**

A state/tribe may elect to participate in activities beyond base program activities.

Participation in these activities will require the state/tribe to obtain any necessary information on agricultural land uses in areas inhabited by endangered species and determine alternate pesticides and/or use limitations to achieve the goal of protecting species while minimizing impacts on pesticide users. These efforts should incorporate agricultural, fish and wildlife, and conservation interests.

For the activity selected, the state/tribe should outline the criteria to evaluate the program's effectiveness, the economic and environmental impacts on the recommendations, and plans or pilots they may have, including any benefits to the species. State/tribal-initiated plans or pilot programs can be evaluated after implementation.

## 2. Additional Activities

### a. Outline of State/Tribal Endangered Species Protection Program

The state/tribe can outline its own program with specific measures for the protection of endangered species. The state/tribal outline should include a schedule for implementing the state/tribal-initiated plan and for conducting a pilot using the approved plan.

### b. Participation in the Federal Program as a Pilot

The state/tribe can outline their participation in a pilot program of the Federal Endangered Species Protection Program. The outline should include the method the state/tribe will follow to implement the use of the habitat maps and bulletins in their counties to protect endangered species and track the results.

### c. States/Tribes Conducting Public Review of Maps

States/tribes are strongly encouraged to obtain public comment on review maps and pesticide tables. A review would be announced (perhaps jointly by EPA and the state/tribe) and a location to obtain review materials identified. All comments would be coordinated by the state/tribe.

### d. State/Tribe Developed Projects

States/tribes are encouraged to propose an expanded work program in cases where the state/tribe has an active endangered species protection program and has already addressed many of the other work program requirements. Again, the flexibility provided in the guidance allows for creativity and uniqueness in the design of endangered species protection program.

## **E. WORKER PROTECTION PROGRAM – WORK PROGRAM ACTIVITIES**

### **1. Introduction**

#### **a. General**

This section identifies the elements required for inclusion in the state/tribal work program in the area of worker protection.

#### **b. Overlap with OCM Worker Protection Enforcement Program**

OCM's guidance for worker protection enforcement activities is described in the Enforcement Component of the FY92 work program. The OCM guidance addresses planning for and initial implementation of a worker protection enforcement program. The inherent relationship between the program activities required in this section by OPP and the OCM-required enforcement activities results in some necessary overlap.

For example, a worker protection program requirement is the development of an Implementation Strategy, which must include several chapters as discussed in the following section. One chapter and one enforcement requirement is the development and subsequent implementation of a Compliance Monitoring Strategy. Work program requirements may involve inter-agency coordination as well as outreach and communication activities. Where there is such overlap, the applicant may decide to coordinate and jointly develop the particular activities. However, the Implementation Strategy and the Compliance Monitoring Strategy must be presented as distinct documents.

### **2. Work program Requirements**

#### **a. General**

The applicant will develop a work program for worker protection program activities and submit the proposed work program to the EPA Regional Program Office.

The work program will include, at a minimum, these three program components:

**(1) An initial outreach/communication effort**

(2) A final implementation strategy for the worker protection program

(3) An implementation schedule

**b. Initial Outreach/Communication Effort**

Within three to six months after the WPS is published in the Federal Register, the state/tribe will reproduce and distribute informational materials which will be provided by the EPA Regional Program Office. These materials will be directed at employers, employee organizations, and other interested parties. For quick distribution, the State/Tribe will have prepared a distribution list of employers and employee organizations that will receive the information, and submit it along with the approved work program submitted with the grant application.

**c. Implementation Strategy****1. Submission Time table/EPA Review**

The strategy should be submitted by the applicant to the EPA Regional Office within eight months after the final Worker Protection Standards (WPS) are published.

Within one month after receipt, the EPA Regional Office will provide the applicant with comments, if any. The state/tribe will address any comments within one month of their receipt and forward the revised implementation strategy to the EPA Regional Program Office.

**2. Implementation Strategy Components**

The Implementation Strategy explains how the state/tribe will implement the provisions of the new Worker Protection Standards (WPS) in the regulated and affected communities.

The Implementation Strategy will include, at a minimum, distinct chapters that address:



- (a) Outreach/communication
- (b) Training
- (c) Establishing cooperative relationships with other agencies, where applicable
- (d) A compliance monitoring strategy (See Note below)

The Regional Program Office and states/tribes are to work together to utilize funds to develop state specific programs. The flexibility provided in the guidance should allow for a degree of creativity and uniqueness in designing programs. Where states/tribes have already completed some or all of these three work goals, new or expanded work goals will be negotiated.

**Note:** The requirement of a compliance monitoring strategy is discussed further in the enforcement section of this guidance. The applicant's compliance monitoring strategy must be included as a distinct section of the implementation strategy.

**a. Outreach/Communication**

The major focus of the worker protection program in FY92 is outreach. The development of an outreach/communication program as part of the implementation strategy is key to the success of the program. OPP is developing outreach materials in the form of camera-ready copy and master video/slide programs that will be made available to states/tribes in a format for easy duplication and dissemination.

The applicant will present a detailed, organized method for distributing educational materials and providing information relevant to the WPS to the public and the regulated community. The state/tribal plan for disseminating such information will include provisions for duplicating materials. Outreach/communication efforts should include cooperative efforts with other state agencies, user groups, and the Cooperative Extension Service. The plan also will specify which

groups will be targeted, and the methods/activities that will be used to relay the information.

The outreach program will include briefing workshops to educate the affected public about the WPS. States/tribes may want to utilize funds to organize meetings in different parts of the state and to send participants to EPA-sponsored regional briefing meetings about the WPS.

**b. Training**

EPA is developing national training/ educational materials and guidance documents that will meet the requirements of the WPS. These materials will be made available to states/tribes in the form of camera-ready copy for written materials and masters for audio-visual materials. These materials are designed to promote consistent standards among state/tribal WPS programs and to avoid duplication of effort that would result if each state/tribe developed their own materials. A catalog of these materials will be forwarded to state/tribal agencies as soon as they are available. The applicant should plan for training sessions that will be held when the WPS are final. The applicant may wish to make provisions for modifying the EPA-produced training materials to include state/tribal-specific provisions. The applicant may also wish to make provisions for duplication and dissemination of the training materials.

**c. Cooperative Relationships with Other Agencies**

The applicant will outline the cooperative relationships established with other state agencies, or Federal agencies, where applicable, to coordinate program activities where duplication of effort or conflict may occur. Where appropriate, states and tribes will outline how they plan to coordinate activities and explain how the state/tribe will work cooperatively among the different agencies to identify areas of overlap and define inter-agency responsibilities.

d. **Compliance Monitoring Strategy**

The applicant must develop, complete and submit the compliance monitoring strategy as discussed in the enforcement section of this guidance.

3. **Implementation Schedule**

~~Within ten months of the publication date~~ of the final revised WPS, at the latest, the states/tribes must begin putting their implementation strategies into effect. States/tribes should carry out the activities contained in the strategy in the order of their priority and according to schedule.

The 10-month requirement is based on this calculation:

	8 months	State/Tribe development of the implementation plan
+	1 month	Regional review and comment
+	<u>1 month</u>	State/Tribe incorporates comments
	10 months	Total.

See section E(2)(c)(1) above.

F. **SCHEDULING**

The state/tribe prepares and submits a schedule of activities and accomplishments planned for the grant period.

G. **REPORTING**

States/tribes report on pesticide program activities and accomplishments conducted under cooperative agreements.

1. **Certification and Training Program**

The reports concerning the State/Tribal program for certification and training of pesticide applicators are submitted semi-annually according to the specifications outlined in item "e" of the Certification and Training Work program section and in the protocol for certification mid-year and end-of-year evaluations.

## **2. Program Initiatives**

Reports on activities and accomplishments in the program initiative areas of worker protection, ground water, and endangered species also are required at mid-year and end-of-year. These reports are submitted by the State/Tribe to the EPA Regional Program Office within 30 calendar days following the completion of the second and fourth Federal fiscal year quarters.

## **3. Report Format**

Reports consist of a narrative summary of the activities and accomplishments during the reporting period. Projected accomplishments, updated schedules, and activities are reported according to the quarter in which they occurred (or will occur for the upcoming six month period). The reports describe how the state/tribe has progressed in developing the program (implementation strategies, management plans, etc.), as well as how they have put their strategies and plans into effect and what has resulted. The summary includes:

- (1) Tangible outputs completed
- (2) Possible outputs in the up-coming quarter
- (3) An updated schedule for the up-coming quarter (noting any changes made from the original accomplishments schedule)
- (4) Problems and proposed resolutions
- (5) Utilization of funds (not an accounting of where funds have been spent, but an indication of how well funding is being utilized, e.g., if the State/Tribe expects to have a surplus that could be used for additional activities, or if funding may be insufficient for planned activities)

The EPA Regional Program Office submits the mid-and end-of-year reports to the Field Operations Division (H7506C), EPA Office of Pesticide Programs.

## **H. ACCOUNTING RECORDS AND FILING SYSTEMS**

According to 40 CFR Part 31.20, applicants must expend and account for funds awarded in accordance with state/tribal laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures must be sufficient to: 1) track the expenditure of funds separately for at least each of three components (enforcement, certification and pesticide program activities) of a consolidated pesticide agreement; 2) permit preparation of financial reports required by the regulations; and 3) permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

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.

## **I. EVALUATION PLAN**

The cooperative agreement should include an evaluation plan mutually acceptable to EPA and the state/tribe. As a minimum, the plan should include a schedule for conducting the mid-year and end-of-year evaluations. Appendix VII describes program evaluations. The mid- and end-of-year evaluations of pesticide program activities are provided with the state reports to the Field Operations Division (H7506C), EPA Office of Pesticide Programs.

## **J. PROGRAM FUNDING**

Appendix XXIV provides information on FY92 funding for the Certification Program, the Ground Water Protection Program, the Endangered Species Protection Program, and the Worker Protection Program.

#### **IV. ENFORCEMENT ACTIVITIES FOR FY 92 WORK PROGRAM**

##### **A. INTRODUCTION**

Each application for FY 92 enforcement cooperative agreement funds must include a proposed work program consisting of a description of the work to be conducted and a schedule for accomplishment of the outputs and activities. In order to be eligible for enforcement funds, applicants must be able to demonstrate a need for an enforcement program of at least one half of a work year of inspectional/ enforcement activities.

The applicant and regional office should work closely together to develop a complementary EPA/state or EPA/tribal compliance program. EPA and the applicants need to work together to effectively target compliance monitoring and enforcement efforts towards the areas which may pose the greatest risk to health and the environment. Targeting for environmental results must be an everyday part of the enforcement program in the field.

The two national enforcement priorities for FY 92 (follow-up on major pesticide regulatory actions, and planning for and conducting worker protection enforcement activities), once implemented in the field, should help yield environmental results.

In order to help focus specific compliance monitoring efforts across the country, Compliance Monitoring Strategies are developed by the Office of Compliance Monitoring as major pesticide regulatory actions are taken by EPA throughout the year. These strategies directly impact the work conducted under cooperative agreements and will be forwarded to the states/tribes by the regional offices. Additional outputs required by new or revised strategies may require the renegotiation, during the project period, of the outputs agreed upon prior to the beginning of the project period; this may include substituting newly required outputs for similar type outputs in the original agreement. Follow-up on these compliance monitoring strategies is essential if their intended purpose is to be met. EPA will place increased emphasis on follow-up to compliance strategies in FY 92 through semi-annual evaluations and more frequent follow-up after the issuance of specific enforcement strategies.

To assist pesticide enforcement grantees, a sample core enforcement work program for FY 92 is included in appendix VIII. The sample core work program outlines the activities which must be addressed as a minimum in every application. It could be used by interested pesticide enforcement grantees as a starting point for developing their FY 92 pesticide enforcement grant work programs. The EPA regional offices have also received computer discs containing this sample core work program.

## B. WORK PROGRAM ACTIVITIES

As a minimum, each compliance cooperative agreement work program must address: 1) each of the eight national issue-specific compliance monitoring activities discussed below (a-h); 2) priority setting; 3) inspection and sample collection activities; 4) quality assurance; 5) formal referrals; 6) enforcement response, and case development; 7) tracking requirements; 8) reporting; 9) accounting records and filing systems; 10) evaluations; 11) unresolved problems; and 12) EPA support.

### 1. Issue-Specific Compliance Monitoring Activities

This section addresses the following compliance monitoring activities: a) cancellation, suspensions and other major regulatory actions; b) worker protection enforcement activities; c) enforcement activities for the pesticide removal regulations; d) enforcement activities for groundwater protection; e) enforcement activities for endangered species protection; f) Section 6(g) information submittal and pesticide recalls; g) exports; and h) certification and training.

#### a. Cancellations, Suspensions and Other Major Regulatory Actions

For FY 92, a national enforcement priority will be following up on cancellations and suspensions of pesticide products, and other major regulatory actions. States will conduct cancellation/suspension inspections and other compliance monitoring activities to assure compliance with major pesticide regulatory actions within the time frames specified in the nationally issued Compliance Monitoring Strategies. Inspections and other compliance monitoring activities for this priority area will address: 1) major cancellation actions; 2) all suspensions under FIFRA Section 6; 3) FIFRA Section 3(c)(2)(B) suspensions; and 4) other major pesticide regulatory actions (i.e. label improvement programs, etc.)

On the quarterly reporting form (EPA form 5700-33H), the recipients must document that compliance monitoring for cancellation/suspensions was completed as a component of their comprehensive inspections. (There is a reporting block under each type of inspection on the reporting form for this purpose.) As discussed under the "tracking" section of this guidance, recipients must track the inspections, violations found and enforcement actions taken in follow-up to cancellations and suspensions. Narrative reports will be prepared on the inspections and enforcement actions taken as specified in the applicable compliance monitoring strategies.

**b. Worker Protection Enforcement Activities**

Another national enforcement priority for FY 92 will be planning for and conducting enforcement activities for the revised worker protection standards and associated labeling requirements. This will be based on publication of the final rule as described below. (Required worker protection enforcement activities are discussed in items "1" through "6" and continue through page 43.)

**1. Notification to Prospective Constituents**

Between the publication date of the Final Rule and effective dates for compliance, states and tribes must use the opportunity of inspections conducted under the cooperative agreement (with the exceptions noted below) to notify prospective constituents of the provisions of the final rule and to ensure compliance with current worker protection requirements. This would be in addition to any other methods for notification used by the state. (Export and dealer inspections would tend to be the only inspections which would not facilitate notification of prospective constituents.)

**2. Compliance Monitoring Strategy**

states and tribes must submit to their EPA regional office a Compliance Monitoring Strategy for worker protection within six months of the publication date of the final rule. This is part of the overall implementation strategy discussed in Part III. E. of the this guidance.

OCM's Pesticide Enforcement Policy Branch will issue the draft national Compliance Monitoring Strategy upon publication of the rule or shortly thereafter, giving states a chance to study it and begin developing their own. The state strategy should be consistent with the national strategy.

The state's strategy will then be reviewed and commented on by the EPA regional office within one month of receipt. (The region's review should focus on whether the state's strategy adequately follows the national strategy and whether the proposed strategy is appropriate, given the state's particular situation.) The state or tribe will then address the region's comments, if any, within one month of receipt and forward the revised strategy to the regional office.

If a state/tribe cannot submit the strategy within six months of the publication date of the final rule, the regional office and state should reach agreement on a new date for submittal. In the meantime, the state must follow the national Compliance Monitoring Strategy. The regional office shall then request, in writing, concurrence from OCM's



Grants and Evaluation Branch on the new date, explaining the reason for the delay. (Such requests are expected to be the exception rather than the rule.)

For informational purposes, the regional office shall send a copy of the state/tribe's final strategy to OCM's Grants and Evaluation Branch.

(Appendix XIV provides two outlines which the state may use for OCM's Compliance Monitoring Strategy and for OPP's Implementation Strategy.)

As a minimum, the compliance monitoring strategy must include a compliance communication strategy, a description of interagency coordination, and a targeting scheme as distinct components, as discussed below.

**a) Compliance Communication Strategy**

The applicant must develop and submit a compliance communication strategy for worker protection. This will describe the actions which the applicant will take using enforcement funds to communicate the enforceable provisions and effective dates of the worker protection rule.

(If an applicant is concerned about the distinction between the "outreach/communication" section of the Implementation plan required by OPP, and the compliance communication strategy, keep the following point in mind. The compliance communication strategy shall focus on the types of communication activities to be supported with enforcement funds. If no such activities will be supported with enforcement funds, then this section of the compliance monitoring strategy should simply state so and refer to the outreach section of the Implementation Plan. Otherwise, this section should describe the actions to be taken in FY 92 to communicate the enforceable provisions.)

The applicant must identify in the Compliance Communication Strategy the specific sectors of the regulated community that will be affected, explaining how and when the state/tribe plans to inform each sector of the requirements of the revised rules.

The applicant shall gather information available on the number and location of the pesticide users and regulated community in the state or on the reservation within the various sectors likely to be affected. (The national Compliance Monitoring Strategy will provide further guidance on where a state might find information outside of the lead agency to help identify the sectors of the regulated community that will be most affected by the new standards). The applicant should discuss with the region the extent and quality of the information gathered, based on the

information resources available. This information is necessary to give the state/tribe an objective basis from which to better target worker protection inspections. It could also help the applicant decide where to concentrate efforts to inform the affected regulated community. (The national Compliance Monitoring Strategy for Worker Protection will give further guidance on priorities for targeting.)

The applicant must inform the regulated community of its responsibility to comply with the Worker Protection Rule. Apart from inspections, the applicant will need to develop other means of communicating this information. The state/tribe might, for example, hire a communications expert to develop a media strategy, post compliance notices in pesticide dealerships or develop compliance newsletters or "compliance articles" for inclusion in appropriate journals. These and other approaches could be considered by the applicant in developing their enforcement compliance strategy. The approaches and actions to be taken to communicate the enforceable provisions of the final rule and to be supported with enforcement funds must be described in the compliance communication strategy.

**b) Inter-Agency Coordination**

Some agencies other than the recipient of enforcement cooperative agreement funds may have jurisdiction and responsibility for enforcing the worker protection standards for pesticides and associated labeling requirements. The recipient of the enforcement cooperative agreement funds is the lead agency for enforcement and must develop a mechanism for coordination with the other agencies involved. The lead agency must clarify in writing this mechanism and specific roles and responsibilities of each agency. The applicant may want to consider entering into a sub-grant with the other agency involved and pass through a portion of the worker protection enforcement cooperative agreement funds, as appropriate. As soon as the final revisions to the worker protection regulations are published, cooperative agreement recipients should begin discussions with other appropriate agencies.

The Inter-Agency component of the compliance monitoring strategy must include:

1. A clarification of the specific roles and responsibilities of each agency which has jurisdiction and responsibility for enforcing the worker protection standards in the state;
2. A description of the mechanism for coordinating with the other agency/agencies involved; and

3. A copy of any sub-agreement package negotiated and approved.

Development and submittal of the above only applies to applicants in situations where more than one agency has jurisdiction and responsibility for enforcing the worker protection standards. (It is important to address this topic specifically within the enforcement context since it may be the case in some states that worker protection enforcement responsibilities are shared, but program responsibilities are not shared, or vice versa.)

c) **Targeting Scheme to Ensure Compliance with the Worker Protection Rule**

The applicant must develop and submit a scheme specifically for targeting inspections to ensure compliance with the worker protection rule. Targeting will not be implemented until the effective dates for compliance have passed. The dates will be specified in the Final Rule. (OCM recognizes that if a state requires more than six months to complete their compliance monitoring strategy, it will probably be due to the development of a targeting scheme. If it is necessary to renegotiate a date for submittal, the region might want to require timely submittal of the first two components while allowing the state more time to develop a targeting scheme.)

These inspections should be comprehensive, targeted specifically for when and where activities regulated by the worker protection rule are most likely to take place. (Specific guidance on the priorities to consider in targeting worker protection inspections will be included in the national Compliance Monitoring Strategy, which applicants will use to help identify the priorities applicable within their state/tribe.)

3. **Implementation of Compliance Monitoring Strategy**

Within eight months of the publication date of the final Revised Worker Protection Standards, or before, states/tribes must begin to implement the compliance communication strategy and inter-agency coordination components of their Compliance Monitoring Strategies. (If the state/tribe does not have a compliance monitoring strategy in place eight months after the publication date of the rule, it must begin implementing the National Compliance Monitoring Strategy until the state strategy is in place.) This eight month time frame takes into account submittal of the strategy, review by EPA and the aforementioned time for making changes, if any, to the strategy.

Once the effective dates for compliance with the Final Rule have passed, the targeting scheme must be implemented.

#### **4. Inspectional Activity**

##### **(a) Conducting Inspections**

Once the compliance dates for the revised worker protection rule have passed, the state/tribe's pesticide inspection activities will need to include monitoring for compliance with the new worker protection labeling requirements. Monitoring for compliance with worker protection requirements shall be another element of comprehensive inspections.

##### **(b) Incident and Complaint Investigations**

Applicants will also conduct investigations in response to incident and complaint reports.

##### **(c) Tracking**

EPA will track Section 26 and 27 referrals; applicants will track tips and complaints not referred by EPA.

##### **(d) Inspection Checklist**

It is recommended that the applicant use the national Checklists now under development. The Checklists will include a section for monitoring compliance with Worker Protection requirements once the compliance dates are effective. The checklist may be expanded or modified to suit state/tribe requirements, as appropriate.

#### **5. Training**

Using funds received for worker protection enforcement, states/tribes should send appropriate personnel to available EPA-sponsored training sessions on the new Worker Protection Rule, provided that the state lead agency can obtain approval for employees to travel out-of-state, if necessary. The number and type of personnel to be sent should be discussed with the region. If the state or tribe needs to supplement federal training with their own training, the development of this training should be coordinated and discussed with the regions.

## 6. Reporting

Applicants will need to specifically report on the implementation of their compliance monitoring strategy and the other worker protection enforcement activities described in this section. Two reporting mechanisms will be used to document the state/tribe's worker protection compliance monitoring activity.

### 1. Evaluation Reports

The regions will document the state/tribe's worker protection compliance efforts as part of the mid-year and end-of-year evaluation reports. (As a minimum, evaluations must address the topics listed in OCM's core protocol for FY 92 mid-year and end-of-year reviews of worker protection enforcement activities. This evaluation protocol is being updated during FY 91.)

A thorough discussion and evaluation of activities will be necessary in order to provide useful information to Congress.

### 2. Quarterly Accomplishment Reports

The second mechanism will be through the quarterly reporting mechanism. Following the effective dates for compliance, the state's inspections performed under the cooperative agreement must include monitoring for compliance with the worker protection rule. (Export, certified applicator records and dealer inspections are not applicable in this case.) If monitoring for worker protection requirements was not included as part of every remaining type of inspection, the grantee must explain why in the narrative section of the quarterly report.

Once the compliance dates are effective, this information will be used in reporting to Congress and responding to Congressional requests for specific information on the number of inspections performed to monitor compliance with the worker protection rule and to ascertain the status of enforcement efforts and implementation of worker protection compliance strategies.

### **c. Planning Enforcement Activities for Residue Removal**

**For FY 92, states will need to plan for enforcement activities to ensure compliance with the pesticide residue removal regulations. (Implementation of these activities is expected to be a national enforcement priority for FY 93.)**

Under Section 19(f) of the amended FIFRA, by December 24, 1991 (the end of the first quarter of FY 92), EPA must promulgate regulations that prescribe procedures and standards for removing pesticides from containers before disposal. Effective December 24, 1993, a state may not exercise primary enforcement responsibility under Section 26, or certify an applicator under Section 11, unless the Administrator determines that the state is carrying out an adequate enforcement program to ensure compliance with the aforementioned regulations.

In preparation for this deadline, states must plan for the state enforcement activities which will ensure compliance with these regulations. To this end, by the end of FY 92, each state must, as a minimum, submit an outline detailing specific proposed activities which will be conducted to ensure compliance with the residue removal regulations. (The national enforcement guidance to be issued with these regulations should assist the states in identifying and carrying out these enforcement activities.)

#### d. Enforcement Activities for Groundwater Protection

1. In FY 92, states/tribes will continue to monitor compliance with and enforce labeling as part of their routine inspections based on priorities agreed upon between the region and the state.

In targeting use inspections, states/tribes will take into account areas of high risk for groundwater contamination, along with how these areas overlap with locations of pesticide use. In their quarterly reports, states/tribes will document the number of inspections which included compliance monitoring for groundwater-related requirements or groundwater sampling.

2. As part of the enforcement activities associated with a groundwater protection implementation plan or state/tribal Management Plan, states/tribes may conduct the following activities in FY 92:

These activities relate to enforcement elements that may make up a particular state's/tribe's groundwater management plan. These activities may be part of either a generic or pesticide-specific management plan that may be funded by OCM enforcement monies.

For those states/tribes that have not already done so, they must plan for, identify and describe their enforcement authorities, capabilities and activities which will be used to ensure compliance with the provisions of their ground water management plan (or groundwater protection implementation plan); they must also include a clear statement of the

roles of different agencies if more than one agency within a state/reservation will potentially be involved with enforcement activities for protection of ground water from pesticide contamination.

This identification/description must occur according to a schedule agreed upon with the regional office and the aforementioned description must be submitted to the regional office for review and approval.

b. States/tribes will implement the aforementioned enforcement activities.

c. If applicable within a state, FY 92 funds may be used by states/tribes to develop any Memoranda of Understanding with other agencies to coordinate specific enforcement responsibilities and actions.

d. If states/tribes need to develop enforcement authorities and/or prohibitions which are more stringent than those currently in place for the protection of ground water from pesticides, then a portion of cooperative agreement funds, as agreed upon with the regional office, can be used for development of such enforcement authorities. The development should occur according to a schedule agreed upon with the regional office.

3. Several existing federal statutes currently provide enforcement authorities in cases where water supplies have been contaminated and are posing imminent and substantial risks to the health of those using the effected water system.

For example, when contamination is detected within a public water supply and exceeds a Maximum Contaminant Level (MCL), the contamination constitutes a violation of the Safe Drinking Water Act (SDWA) regulations for which the public water system is responsible. The SDWA includes emergency powers to respond to contamination of either public water supplies or underground sources of drinking water that present an imminent and substantial endangerment to the health of persons. Under this expanded authority, EPA may issue orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment. Under CERCLA, EPA has the authority to require corrective action by parties responsible for ground water contamination. The Agency can also recover the costs of cleaning up a site resulting from illegal disposal or leaks and spills. EPA and the states needs to take advantage of the CERCLA

enforcement authorities by closely coordinating their efforts under FIFRA and the SDWA with those of CERCLA. In general, EPA and the states should place more emphasis on coordinating FIFRA, SDWA, RCRA and CERCLA enforcement activities to identify parties responsible for ground-water contamination as a result of misuse of pesticides, including illegal disposal or leaks and spills.

When developing either the generic or pesticide-specific management plan, states/tribes should consider the enforcement authorities available under other federal/state statutes, when it comes to contamination of ground water or drinking water supplies, and coordinate enforcement activities with EPA and other state agencies, as appropriate, to make full use of other statutes where applicable.

In relation to the above, it is recommended (but not required) that the state lead agency (SLA) develop for their own use an "enforcement authorities chart" which indicates the enforcement authorities of each of the state agencies associated with enforcement for pesticide contamination of ground water or drinking water supplies. This chart would also contain the name of the state agency contact and his/her phone number. The state inspectors and managers could use this as one tool in developing the best enforcement approach with regard to preventing or follow-up to ground-water contamination.

**e. Enforcement Activities for Endangered Species Protection**

Please note: EPA anticipates that sometime in FY 92 the Agency will issue Pesticide Registration (PR) Notices to registrants of affected products. The Notices will require pesticide registrants to modify the labeling of products affected by the Endangered Species Protection Program. All affected products "sold or distributed" after a specified date will be required to carry a label statement directing the user of the product to comply with the limitations in the bulletin.

1. Enforcement of the use limitations to be imposed to protect listed species will be carried out under the provisions of FIFRA addressing misbranding and misuse. Products whose use requires limitations to protect listed species and which do not carry the necessary information on the product labeling, may be identified through routine inspections of manufacturing facilities and pesticide distributors and dealers or through information received regarding suspected misbranding. Products found to be misbranded (i.e., do not carry the required label language to protect listed species) may be subject to



enforcement action. In the field, pesticide misuse will be identified similarly through routine inspection and information provided regarding alleged misuse of a pesticide product. In targeting use inspections, states/tribes will take into account areas inhabited by endangered species, along with how these areas overlap with locations of pesticide use.

2. Once the final Endangered Species Protection Program is published by the Agency, the states/tribes will need to plan for and implement appropriate enforcement measures. The states/tribes will need to comply with the national Compliance Monitoring Strategy for the Endangered Species Protection Program to be issued in FY 1992.

#### **f. Section 6(g) Information Submittal and Pesticide Recall**

**Section 6(g).** Under FIFRA Section 6(g), EPA may require all persons who produce, sell, distribute or commercially use a suspended or cancelled pesticide to notify EPA, state and/or local officials of the quantities in their possession and their location. Time frames for submission of the section 6(g) information will be stated in each cancellation or suspension order or in a FIFRA section 6(g) notice. Failure to submit accurate section 6(g) information, and/or failure to submit information in the required time frames, is a violation of FIFRA section 12(a)(2)(K) and is subject to civil penalties up to the statutory maximum.

As part of their routine inspections, states and tribes will help to enforce the information submittal requirements. States will consider the information they receive on quantities and locations of suspended or cancelled pesticides (received either directly from the regulated community or from the region) in targeting future inspections. Additionally, the region may refer inspections to the states, although the number that the state may be asked to perform in support of the information submittal requirements is impossible to project and may require some adjustments to other projected inspectional activities.

**Note:** OCM plans to track information submitted by the regulated community. OCM plans to then send a report to each regional office indicating the quantity and location of cancelled or suspended pesticides stored within the jurisdiction of that region. It has not yet been determined if the region will be required to submit this information to the affected states. How the state plans to track the information necessary to enforce the 6(g) information requirements -- whether using information provided by the region or through the state's own tracking efforts -- should be clarified in the cooperative agreement.

**Pesticide Recalls:** EPA may also require registrants and distributors to recall pesticide products which have been both suspended and cancelled. Once these recall requirements are effective, states/tribes will need to enforce where applicable. (This applies only to pesticides suspended under section 6.) Once these requirements are effective, the states/tribes and regional offices should discuss the relative priority of the different activities being conducted under their enforcement cooperative agreement. (For both section 6(g) and section 19, OCM plans to issue either generic or chemical specific national strategies, which also address the suspension/cancellation.)

## **g. Exports**

In order to enhance enforcement in this area, the states were requested to conduct pesticide export inspections in FY 91, the number for which was negotiated with the regions. In FY 92, the states will continue this effort by conducting a number of pesticide export inspections; the specific number will continue to be negotiated with the regions. OCM will provide specific information for targeting facilities by early FY92.

(For your background information, an explanation of the pesticide export requirements is included in appendix XV. OCM previously provided guidance on conducting and targeting facilities for export inspections. Compliance checks dealing with the export of a newly cancelled product will be included in all chemical specific cancellation strategies. In addition, since a new export policy is expected to be issued in FY 91, the states and the regions should be aware that a compliance monitoring strategy dealing with exports will follow shortly thereafter.)

## **h. Certification and Training**

States will enforce the revised final certification and training regulations to be issued in FY 92. The new certification and training regulations will cover minimum standards for training and certifying pesticide applicators and minimum record-keeping requirements.

## **2. Priority-Setting**

The work program should include a priority-setting plan for compliance-related activities.

New applicants need to submit a priority-setting plan with their cooperative agreement application; the plan should be based on the best available data. Applications for continuing programs need to: 1) reference their existing priority-setting plan; 2) indicate any changes in the plan and include a copy of their plan, if it has been amended or changed; and 3) list the priorities for the year being addressed.

Each priority-setting plan should include the following elements: 1) establishment of criteria for setting priorities; 2) review of information sources and listing of problem areas; 3) ranking of problem areas to be dealt with; and 4) a distribution of the available resources to the problem areas based upon the magnitude of the problem. The priority-setting process should enable a state to concentrate its training, compliance monitoring, and enforcement programs on specific pesticide manufacturing, distribution, and use activities that pose the greatest risk to health and the environment. The outline for priority-setting plans, provided in appendix XIX, is recommended, not required; states may use their own outline, provided that the four basic elements listed above are addressed. Appendix XIX also includes a model priority-setting plan, based on the recommended outline.

During FY 91, a work group on priority-setting is proposing a standard method for organizing data that serves as the basis for priority-setting. A full description of this proposal will be circulated for comment. As part of FY 92 cooperative agreement activities, states and tribes may be asked to begin planning and implementing a mechanism to collect and track this violation information. The costs for gathering and submitting this information may be negotiable under the cooperative agreement.

### 3. Inspection and Sample Collection Activities

Applicants will project and conduct inspections and sample collection activities. Once the applicant has determined its priorities (taking into account the national enforcement priorities), the state/tribe shall describe its proposal for carrying out a balanced program that addresses these priorities during the agreement period. The outputs, which the applicant proposes to accomplish during the agreement period, must be aimed at solving and dealing with the pesticide problems identified by the priority-setting process.

With regard to sample-related projections, prior to negotiations with EPA, the state lead agency shall consult with their colleagues in the state laboratory which will be conducting sample analyses under the cooperative agreement. This should help facilitate input from the state laboratories into the cooperative agreement program, in a coordinated manner within the state. Where appropriate, the state lead agency (SLA) is encouraged to invite their state laboratory representative to the negotiation session with EPA.

**Categories of Inspections:** Inspections must be conducted in accordance with the procedures set forth in the updated Pesticides Inspectors Manual (or comparable state procedures). The categories of inspections and investigations to be conducted include:

- ☐ agricultural use;
- ☐ non-agricultural use;
- ☐ experimental use;
- ☐ producer establishments;
- ☐ marketplace;
- ☐ imports;
- ☐ exports;
- ☐ certified applicator records;
- ☐ restricted use pesticide dealer;

Federal facility inspections would be sub-sets of these.

Federal Facility Inspections: With regard to federal facility inspections, as stated in the EPA Federal Facility Compliance Strategy, November 1988, "... with the exception of very limited presidential exemptions ... federal agencies must generally comply with all provisions of federal environmental statutes and regulations as well as all applicable state requirements..." The state/tribe and region should agree on a plan to ensure adequate inspection coverage of federal facilities in each state. In most cases the regional office will negotiate a commitment for the recipient to conduct an agreed upon number of federal facility inspections. These inspections should be sub-sets of the categories of inspections routinely conducted and outlined above.

Comprehensive Inspections: It is expected that the states/tribes will conduct comprehensive inspections, addressing every element of each type of inspection. As part of comprehensive inspections, we want to highlight the importance of specifically checking for cancellations/suspensions, child resistant packaging and any labeling or other requirements affecting groundwater, endangered species and worker protection, once the compliance dates are effective.

Strategies: States/tribes need to follow requirements related to inspections which are included in national Compliance Monitoring Strategies.

In FY 92 EPA will be placing increased emphasis on follow-up of compliance monitoring strategies through semi-annual evaluations and more frequent/detailed follow-up after the issuance of specific compliance monitoring strategies. State/tribes should continue to prepare narrative reports on the inspections and enforcement actions taken as specified in the applicable compliance monitoring strategies.

EPA Form 5700-33H: EPA Form 5700-33H must be completed and include projections for the categories of inspections listed on the form. (Detailed instructions for completing the form are in appendix XVIII.)

**Inspection Time frames:** Appendix II on "Application Review Procedures" contains the time frames for inspection and sample collections/analyses to be used in evaluating pesticide enforcement cooperative agreement applications. During the application negotiation the grantee will commit to inspectional, sampling, and analytical time frames agreed upon. (They are the same as those included in the FY 91 guidance. During FY 92, the time frames will be reviewed to determine how they need to be changed, if at all, to address disposal-related compliance monitoring efforts.)

**Documentation of Inspections:** Inspections must be conducted in accordance with the procedures set forth in the updated EPA Pesticides Inspection Manual (or comparable state procedures).

Among other things, it is critical to ensure proper documentation of inspections (affidavits, maps, photos, etc.). This has been recently identified as an area of concern in several states. States need to ensure that proper documentation is completed for each inspection.

**Inspection Reports:** Copies of all inspectional reports shall be retained by the state/tribe for a reasonable period of time, but at least until any associated enforcement cases are resolved and closed, or until the close-out of a grant cycle. These reports must be available for examination by EPA or be forwarded to the EPA regional office. EPA Headquarters recommends that inspectional reports be retained for a minimum of three years.

Applicants with partial or no enforcement capability must develop procedures for forwarding inspection reports to EPA for enforcement determination and action. These procedures must be submitted for review with the cooperative agreement application and must be approved.

#### **4. Lawn Care Activities**

A March 1990 GAO report entitled, "Lawn Care Pesticides: Risks Remain Uncertain While Prohibited Safety Claims Continue," recommended that EPA pursue an enforcement strategy for monitoring lawn care pesticide industry compliance with misbranding and "claims differ" provisions of FIFRA section 12(a)(1)(B) and (E).

The Environmental Protection Agency has determined that labeling claims like "environment friendly," "environment conscious," "chemicals EPA approved," "environmentally sound," or the unsupported statement of "biodegradable" constitute misbranding. These claims are prohibited because they are safety claims, or non-



numerical comparative statements. The Agency believes these terms are relative, not definite, and therefore could be misleading to the product user. A claim for a product which is substantially different from claims made for the product at the time of registration constitute a 12 (a)(1)(B) violation or labeling which meets the definition of false or misleading under 40 CFR, Part 156.10 (a)(3) constitutes a 12 (a)(1)(E) violation.

Collection and analysis of data is needed in FY 92, as well as follow-up on any identified problems, to determine whether a long-term lawn care enforcement strategy is appropriate. As part of the one-year FY 92 enforcement strategy, each state pesticide enforcement grantee will:

- 1) Review all possible literature from lawn care pesticide registrants, manufacturers, distributors and professional applicators, and pesticide advertisements in magazines, newspapers, and telephone yellow pages to identify potential violations of FIFRA section 12(a)(1)(B) and (E). In the course of doing so, potential violations of state advertising regulations and/or the Federal Trade Commission (FTC) Act may be identified as well;
- 2) Maintain a log of the names, issues and/or dates of literature or any periodicals reviewed. (This is to be provided to Congress at the end of FY 92 to demonstrate the scope of the review.);
- 3) Identify potential violations of section 12 (a)(1)(B) and (E). Document enforcement actions or referrals as follows:
  - A. Enforcement taken under section 12 (a)(1)(B) or (E) (Product Violations)
  - B. Enforcement taken under state law
  - C. Referral to FTC region (Service Violations)
  - D. Referral to other state agency
- 4) Refer to the FTC Regional offices or appropriate state agencies, prohibited safety claims made by professional pesticide applicators or any identified violations of the FTC Act. A Brief background information is included in appendix XXII. Additional information will also be included in the compliance monitoring guidance to be issued by OCM.
- 5) Within the category of non-agricultural use inspections, negotiate and

incorporate into regularly scheduled inspections, a specific number of lawn care use inspections, e.g. professional and private applicators, golf courses and turf farms. The number of lawn care inspections should be no less than ten (10) in a state and be written into the cooperative agreement.

- 6) During the mid-year FY 92 evaluations, the states will submit the documentation to date on review of periodicals. Included will be the number of inspections focussing on lawn care as of the end of the second quarter, any enforcement actions taken under FIFRA or state laws, and any referrals to FTC/state agency as of that date. The data for the third and fourth quarters of FY 92 will be submitted with the fourth quarter report on inspections. To facilitate consistency in documentation, the states should create a format similar to appendix XXIII documenting the results of their activities. The appendix contains the acceptable minimum requirements for a log.

To facilitate these use inspections and the aforementioned review of advertising and periodicals, separate FY 92 compliance monitoring guidance will be sent to the States, through the Regions, during FY91. The results of the FY 92 initiative will be analyzed and distributed during the second quarter of FY 93.

**Producer Establishment Inspections:** An agreed upon number of routine producer establishment inspections should be negotiated with the region so that all producer establishments in any given state are inspected over a specified time-frame on a routine basis.

## 5. Quality Assurance

Applicants are responsible for analytical activities under their compliance cooperative agreements and therefore must establish and implement Quality Assurance Practices as described below. Analytical procedures conducted for enforcement purposes under conditions specified by the cooperative agreement are not subject to Good Laboratory Practices (GLPs). Laboratories performing analytical services under this cooperative agreement must follow practices and methodologies as agreed upon in their approved QA Project Plan.

All cooperative agreements involving environmentally related measurements or data generation are required by the EPA Grant regulations (40 CFR Part 31.45) to develop and implement quality assurance practices consisting of policies, procedures, specifications,

standards and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out of control conditions or malfunctions.

**a. Quality Assurance Project Plan**

For FIFRA Enforcement Cooperative Agreements, a Quality Assurance Plan is required for sampling/analytical activities conducted under the agreement. Sampling activities are not allowed until an EPA-approved Quality Assurance Plan is in place. The EPA Quality Assurance Management Staff (QAMS) recommends that Quality Assurance (QA) Project Plans, rather than QA Program Plans, be developed for FIFRA Enforcement Cooperative Agreements.

QAMS has issued a document titled, "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS - 005/80, December 29, 1980) to assist applicants in complying with the quality assurance requirements. In addition, to assist applicants, NEIC has developed a model quality assurance project plan for pesticides sampling and analytical activities. The states/tribes may use this model or develop their own. (See appendix XVI.)

Each region has an individual assigned as the Quality Assurance Officer and that person will be available to assist the state/tribe in development of a quality assurance program. Copies of the documents referenced above will be obtained from the regional Quality Assurance Officer, who is responsible for approval of the Quality Assurance Plan.

For continuing cooperative agreements, applicants conducting sampling/analytical activities under the agreement must have in place a current approved QA Project Plan. If a Quality Assurance Project Plan submitted in previous years continues to reflect the sampling and analytical activities proposed for the current year, reference to the approved plan on file in the EPA regional office will suffice. Any significant changes in content (including signatories), however, requires submittal of updated pages, or the entire plan as appropriate, with their cooperative agreement application. For FY 91 every recipient which did not update their QA plan in FY 90 was required to review and update their plan (as appropriate) and resubmit it to the regional QA officer for approval by the end of FY 91. Therefore, we would expect, in the majority of cases, submittal of updated pages or the entire updated plan during the first month of FY 92.

New applicants, including both states and tribes, which will conduct sampling/analytical activities under their FY 92 enforcement cooperative agreement must submit their Quality Assurance Project Plans for approval and implement these plans prior to conducting sampling activities under the agreement. EPA Headquarters recommends



that this be done within three months of the start of the project period if not before the start. Sampling activities are not allowed until an EPA-approved Quality Assurance Plan is in place. The schedule for submittal of the QA Plan must be included in the FY 92 cooperative agreement as agreed upon between the applicant and EPA.

**b. Analytical Methods**

Pesticide formulation samples collected for determination of product compliance will be analyzed by the applicant's laboratory, or other laboratory specified in the agreement, using the EPA Manual of Chemical Methods for Pesticides and Devices, Association of Official Analytical Chemists (AOAC) analytical manual (14th Ed.), the Collaborative International Pesticide Analytical Council Manual (CIPAC), or other standard analytical methods. All potentially volatile samples will be verified by procedures spelled out in the NEIC Pesticide Products Procedures Manual or as otherwise specified in the Quality Assurance Project Plan.

Pesticide residue samples in support of misuse investigations will also be analyzed by the applicant's designated laboratory, using available FDA, EPA, USGS or other accepted methods available in the scientific literature or by the pesticide industry. All reported results will be accompanied by appropriate quality control parameters so as to allow evaluation of precision, accuracy, freedom from interferences and confirmation of pesticide (or metabolite) identity.

**c. Cross Contamination Screening**

Applicants conducting sampling activities will establish and utilize a cross contamination screening program for pesticide formulations in accordance with the EPA Cross Contamination Guidelines. (See appendix XVII.)

**d. Check Sample Program**

Each applicant conducting sampling activities will participate in the EPA's national Enforcement Investigations Center (NEIC) Check Sample Program. Under this program, EPA submits pesticide formulations and residue samples to applicants' laboratories for analysis and Cross contamination screening, as appropriate.

The applicant must submit a report indicating the methodology used and the results of the analysis to EPA. EPA will review the report and inform the state/tribe regarding the accuracy of their analysis and the methodology selected. If a state/tribe fails to obtain the correct results, EPA will assess the problem, provide assistance to the applicant's laboratory as appropriate and/or conduct other follow-up activities. This program will also

help assess whether the states/tribes are screening pesticide formulations for cross contamination, since some check samples may be contaminated with another pesticide. NEIC currently notifies each laboratory and regional office of the check sample results. The regional offices will provide a copy of these results to each state lead agency or tribal agency/Chairman in their region which utilizes that particular laboratory for sample analysis.

**e. Back up Analysis Procedure**

The applicant can request back-up analyses from NEIC or other NEIC recommended laboratories, if necessary or requested by the region. Examples where backup analysis may be requested are:

- o A state/tribe, which is unsure of the results of an analysis, requests an impartial or second analysis before initiating an enforcement action;
- o A state/tribe requests that EPA take the enforcement action and EPA desires to check the state's/tribe's analysis.
- o A reference analysis is required due to conflicting results between the state/tribe and the regulated party.

**f. Training of Analytical Chemists**

EPA will provide training of state inspectors and analytical chemist, as necessary. Using cooperative agreement or other funds, the states should avail themselves of EPA workshops, seminars and meetings on proper sampling, analytical procedures, instrumentation, methodology and quality assurance. The regions will work closely with the states to assist in identifying needed training opportunities and help in coordinating participation.

**g. Laboratory Reviews**

Personnel from EPA will also be available, if requested by the state or EPA regional office, to review state laboratory analytical capability and procedures, and to discuss areas needing improvement. Requests for these visits, which will usually be made by representatives from NEIC or the regional Quality Assurance Section, may be initiated by the state or the EPA regional office; they will be arranged by the regional office. A formal report of findings and recommendations will be prepared by EPA for the state upon completion of the on-site visit.

#### **h. Provisions of Analysis Results**

The applicant will send a copy of the results of any sample analysis made under the authority of FIFRA to that person from whom the sample was collected. This is a statutory requirement under section 9(a) of FIFRA.

#### **i. Submission/Retention of Reports**

Copies of all analytical reports, associated raw data and other necessary records for samples collected will be retained by the state/tribe and be available for examination by EPA, or be forwarded to the EPA Regional Program Office.

The analytical reports must be retained by the applicant or the EPA Regional Program Office until the associated enforcement cases are resolved and closed out. It is recommended that analytical reports be retained for a minimum of five years.

### **6. Formal Referrals**

States/tribes will conduct activities under FIFRA Section 26 and 27. Section 27(a) of FIFRA requires EPA to refer to the states/tribes any information the Agency receives indicating a significant violation of pesticide use laws. In accordance with the Final Interpretive Rule governing FIFRA Section 26 and 27 and the 1985 policy memoranda from A.E. Conroy II, EPA in consultation with each state/tribe will identify, in writing, priority areas for formal referral to the state. These priority areas will consist of those pesticide activities in the state/tribes which present the greatest potential for harm to health and the environment. The priority areas will be revised annually, based upon the effectiveness of the programs in reducing the harm associated with pesticide use in the state/tribe. The negotiated written agreement between the state/tribes and the region will contain the criteria for the selection of significant pesticide use cases. Pesticide use cases involving worker protection, groundwater and endangered species will be among those considered significant within the context of the agreed upon criteria for significant pesticide use cases.

All pesticide use cases, identified as significant, will be referred to the state/tribe by EPA in writing, and will be formally tracked as set forth in the Final Interpretive Rule. All other cases will be referred to the state/tribe for information purposes and will not be formally tracked.

The EPA regional offices will formally track all significant pesticide use cases, which are formally referred to the states/tribes under the Final Interpretive Rule governing FIFRA Sections 26 and 27. The state/tribe must commence appropriate enforcement

action for cases, so tracked, within 30 days after completion of the investigation. This period may be extended, after negotiation, if required by the procedural characteristics of the state/tribe regulatory structure or the complexity of the case.

If the state/tribe has not reported on the investigative status within 30 days of the date of referral, EPA will contact the state/tribe to learn the results of the investigation and the intended enforcement response to any violations detected. An investigation should be considered adequate if the state/tribe has: (1) followed proper sampling and other evidence gathering techniques; (2) responded expeditiously to the referral; and (3) documented all inculpatory or exculpatory events or information.

If the region determines that the intended enforcement response to the violation is inappropriate, EPA will first attempt to negotiate an appropriate state/tribe enforcement response. If the state/tribe is unwilling or unable to alter its original enforcement response, EPA may bring its own enforcement action after notice to the state/tribe. That notice will summarize the facts relating to the state/tribe's enforcement response, discuss reasons for EPA's determination that the enforcement action is inadequate and state that EPA will initiate its own enforcement action. The region will not initiate an enforcement action sooner than thirty (30) days after the state/tribe was notified.

## **7. Enforcement Response and Case Development**

Applicants without state pesticide laws or tribal pesticide codes and associated regulations must conduct inspections under federal authority. State pesticide laws and tribal pesticide codes empower the state/tribe to conduct both pesticide inspections and enforcement activities as authorized by their laws or codes.

**It is understood that most states have pesticide laws and regulations in place. However, many states do not have civil penalty authority. Such states are encouraged to take the necessary steps to develop a civil penalty program and set a goal for completion of the law/regulations. Enforcement grant funds can be used toward this effort based on discussions with the regional offices. It is also understood that most tribes have not, to date, developed tribal laws or codes including civil penalty authority. Tribes are encouraged to initiate this activity and set a schedule for completion of the law/code and initiation of implementation.**

Work programs must address each of the following items (a-c) in this section.

**a. Enforcement Response Policy**

Each applicant conducting enforcement activities under the FY 92 grant must have an up-to-date Enforcement Response Policy (ERP) in place before the regional office approves funding for a cooperative pesticides enforcement agreement. The timing of this guidance document should provide sufficient lead time to affected applicants so that they can update their ERPs, if necessary, prior to their submittal of the FY 92 enforcement cooperative agreement application.

**In their applications, states/tribes must agree to follow their ERPs. The regions and applicants should closely monitor the implementation of each state's/tribe's Enforcement Response Policy to determine its effectiveness and appropriateness. (If the SLA does not follow the ERP, then this problem must be addressed during the semi-annual evaluations.) A properly prepared Enforcement Response Policy (ERP) will provide the applicant with a mechanism to evaluate the gravity of each violation encountered, and to respond in a predictable, uniform, and timely manner with an appropriate enforcement action.**

A copy of the up-to-date ERP must be submitted along with the application, to OCM's Grants and Evaluation Branch in order to develop a national repository of state ERPs.

As a minimum, each state's Enforcement Response Policy should include the following:

- o List of violations likely to be encountered;
- o Mechanism for determining level of gravity for each type of violation;
- o List of enforcement remedies available for each type and level of violation (include both state/tribal and federal action);
- o Escalation of penalties for second and subsequent violations;
- o Consideration of potential pollution prevention enforcement penalties and/or in settlement of enforcement cases; and
- o Timetable which the state/tribe will follow to insure the timely investigation of complaints and the timely issuance of enforcement actions when violations are detected.

**In determining enforcement penalties and/or in negotiating settlement agreements, applicants are encouraged to consider potential pollution prevention activities which a violator could undertake in exchange for an appropriate reduction in the enforcement penalty. States are also encouraged to consider the inclusion of single or cross-media pollution prevention conditions, as either the means of correcting the violation or as additional conditions incidental to injunctive relief. Such conditions are appropriate when they discourage recurring or future violations, have no negative cross-media impacts, and are technologically and economically feasible.**

#### **b. Case Development**

As part of their work programs, applicants with enforcement capability are responsible for preparing cases and taking appropriate enforcement actions.

Applicants with partial or no enforcement capability must develop procedures for forwarding inspection reports to EPA for enforcement determination and action. These procedures must be submitted with the Cooperative agreement application for review and approval.

Once an applicant chooses to develop a pesticide law or code, standardized case preparation and enforcement procedures should be developed concurrently with the law or code. These procedures must be developed according to a time line mutually agreed upon between the applicant and EPA, and cited in the cooperative agreement prior to approval of the agreement.

The review of all inspection reports for the detection of possible violations and the initiation of appropriate enforcement action, is an important part of every comprehensive pesticide enforcement program. Applicants with enforcement capability will review the quality and adequacy of evidence gathered during the course of all investigatory activities performed under the cooperative agreement. Each cooperative agreement should include sufficient resources, for this activity, to ensure an adequate level of case development and enforcement. Violations of the applicant's and federal laws are discussed below.

#### **1. Violations of Applicant's Law Only**

The state/tribe must review the quality and sufficiency of evidence gathered in the course of all investigative activities performed under the cooperative agreement. If the evidence reveals a violation of only the state's/tribe's pesticide laws/codes, the state/tribe shall pursue an appropriate remedy provided by state/tribal Law.

## 2. Violations of Federal Law Only

Where evidence reveals a possible violation of federal law only, the state/tribe shall forward the information to the EPA Regional Program Office within 30 days after completion of the investigation. All cases forwarded to EPA shall include all evidence, inspection reports and/or forms, a brief narrative of the case, and a recommended enforcement response. The regional offices should have established time frames for processing state referrals and a tracking system for referrals to the states. Regions are encouraged to provide status reports to states/tribes on cases referred.

The state/tribe will prepare and make available to EPA, when requested, testimony and other evidence pursuant to the procedures adopted by EPA. The state/tribe will provide witnesses for informal settlement conferences, public hearings, and appearances in a court of law, as the EPA requests.

## 3. Violations of Both the Applicant's and Federal Law

If evidence reveals a violation of both state/tribal and federal law, the state/tribe may bring appropriate enforcement action under state/tribal law or refer the case to EPA for action under FIFRA. In the event that a case is referred to EPA for action, the EPA case preparation officer should review the case file to ensure that state/tribal inspection procedures adhere to basic constitutional guarantees and EPA should proceed with the case.

For all pesticide cases, for which the state/tribe determines that the most appropriate enforcement action is not available under state/tribal law, the state/tribe may refer such cases to EPA for enforcement action under FIFRA.

### c. Cross Jurisdictional Situations

For a successful cooperative pesticide enforcement program, there should be cooperation between the tribe(s) and the state(s) in which a tribe is located. Because many of the distributors and applicators of pesticides on tribal lands are not located on the reservation, it is important that tribe(s) and state(s) involved be agreeable to developing procedures for cooperative enforcement of problems involving cross-jurisdictional situations. As a goal, EPA Headquarters recommends establishment of such procedures. EPA regional Project Officers can facilitate coordination between tribal representatives and state representatives of the state in which the tribe is located by negotiating time lines, where appropriate, to be included in both the tribe's and the state's work programs.

## **8. Tracking Requirements**

The applicant will establish and utilize a management system for tracking all inspections, violations found, and enforcement actions initiated. The tracking system should, at a minimum, include the following elements:

- Date of inspection
- Reason for inspection (routine complaint)
- Name of person or firm inspected
- Violation found
- Summary of past compliance history (or reference to an appropriate case file number)
- Enforcement action taken
- Date of enforcement actions
- Disposition of action

The tracking system must constitute a system for allowing the rapid identification of the status of a case and an information resource for informing citizens of the ultimate disposition of their complaints.

Maintenance of the tracking documents and associated files and the length of time that such files will be maintained must be addressed in the cooperative agreement work program.

New applicants must submit a description of the tracking system with their cooperative agreement application and the system must be evident within three months of the start of the project period.

Under the aforementioned or a separate tracking system, states/tribes will document and track the inspections, violations found and enforcement actions taken in follow-up to cancellations and suspensions of pesticides. Reports will be prepared on the inspections and enforcement actions taken after the suspensions and cancellations as specified in the applicable compliance monitoring strategies.

## **9. Reporting**

Applicants need to use EPA Form 5700-33H (in appendix XVIII) for reporting inspection and sample collection accomplishments under the FIFRA Enforcement Cooperative Agreement. A narrative report may need to accompany the revised reporting



form to discuss any pertinent state/tribal enforcement activities not addressed on the form, any program highlights and/or any program problem areas.

Completed compliance monitoring reporting forms are required quarterly. These reports showing inspectional activities and enforcement actions accomplished will be submitted by the state/tribe to the EPA regional office within 30 calendar days following the completion of each federal fiscal year quarter. Quarterly reports are due by January 30, April 30, July 30 and October 30 of each year. States with fiscal years that do not begin on October 1, should still report accomplishments as of these dates.

Reports will be prepared on inspections and enforcement actions taken after "major pesticide regulatory actions" as specified in the applicable compliance monitoring strategy.

The regional offices' requirements for reporting cooperative agreement projections and accomplishments to Headquarters are discussed at the end of appendix XVIII.

#### 10. Accounting Records and Filing Systems

Applicants must maintain accounting records for funds awarded for each component under each agreement (including receipts, state/tribal 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.

#### 11. Evaluation Plan

The cooperative agreement should include an evaluation plan mutually acceptable to EPA and the state/tribe. As a minimum, the plan should include a schedule for conducting timely mid-year and end-of-year on-site evaluations. During, or in follow-up to, evaluations the states and tribe should be prepared to discuss strengths and problems in the program, negotiate a corrective action plan as necessary, and discuss specific recommendations for follow-up activities. Appendix IV will describe program evaluations. (The national evaluation protocol is being updated to reflect changes in the grant guidance, increased emphasis on follow-up to compliance monitoring strategies, findings from recent audits of the enforcement grant program, and pertinent findings from the national Qualitative Review of the FY 89 state Pesticide Enforcement Cooperative

**Agreement Program. It will be circulated to the EPA regions for comment prior to being finalized.)**

## **12. Unresolved Problems**

The cooperative agreement work program must address any unresolved problem areas identified in the most recent end-of-year evaluation and the mid-year evaluations for the current project period and indicate how the state/tribe and/or EPA will address the problem(s). The plan for addressing the problem(s) must include a schedule/time frame for implementing the plan.

## **13. EPA Support to States/Tribes**

The cooperative agreement should describe the types of support (inspector training, NEIC laboratory analysis training, technical assistance, contractor assistance, expert witnesses for state enforcement proceedings, etc.) that the applicant expects EPA to provide and is or will be available to assist the state/tribe in meeting its commitments.

The cooperative agreement should describe any negotiated agreement between the state/tribe and EPA for the handling of referrals and requests for information from the state/tribe. The agreement should include any time frames that are mutually agreeable to the state/tribe and EPA.

## **V. ALLOTMENT OF COOPERATIVE AGREEMENT FUNDS**

This section addresses how specific funding allotments were determined for the components of the cooperative agreement program dealing with enforcement, certification, worker protection program activities, ground water program activities and endangered species program activities. A summary of funding allotments for all components is provided on the chart at the end of this section.

The Pesticides Program annual budget submission to Congress requests an overall program appropriation for pesticides enforcement cooperative agreements. Applicants are to use the initial allotments as a basis for developing, with their respective regional offices, work programs that meet both the applicant's and the Agency's needs.

OCM expects to receive \$15,803,400 for funding the cooperative enforcement program. This is the same funding level as that received in FY 91.

If the budget is not approved by Congress, the proposed allotments will be readjusted. The majority of the Agency's appropriation is allotted to the regions and

cooperative agreement applicants through a base and formula funding system described in sections "a" and "b" below.

Sections "a" and "b" which follow address the enforcement cooperative agreement budget minus the following: a) \$500,000 in funds for possible continuance of a Pesticide Officials Pilot Program, location as yet undetermined; b) \$1,000,000 for worker protection, groundwater and endangered species enforcement-related activities; c) the \$2,000,000 budget for worker protection enforcement-related activities; d) \$500,000 for addressing some of the state laboratory-related needs, in consultation with the U.S. Department of Agriculture, which has related activities underway in the area of food safety. The funds specifically set aside for laboratory-related needs will be discussed in separate correspondence to the regions and states, who will be asked to work with EPA in continuing this effort; and e) approximately \$300,000 in funds set aside in case government-wide budget reductions are necessary in FY 92; rather than ask for the return of funds in the event such government-wide reductions occur, it seemed prudent instead to set aside some funds up front to cover potential reductions. If such reductions are not mandated in FY 92, the funds set aside will be redistributed to the states.

The \$2 million budget for worker protection enforcement is addressed separately under section 2, and the \$1 million budget for groundwater, endangered species and worker protection enforcement related activities is discussed under section 4.

#### A. Base Funding

A base funding level is established for each state, territory and Indian tribe expected to participate in the cooperative agreement program. For FY 92, the following base funding levels have been established: \$107,100 for each participating state, the District of Columbia and Puerto Rico (51 entities); \$56,700 for the Virgin Islands; \$42,600 for Guam; \$28,500 for American Samoa; \$28,500 for the Commonwealth of the Northern Mariana Islands (CNMI); \$22,300 for the Trust territories of the Pacific Islands; \$140,500 for five Indian tribes in Region VIII; \$280,000 for the Inter-tribal Council of Arizona and the nine Indian tribes under ITCA which receive enforcement funds; \$81,500 for the Navajos; and \$30,000 for the Shoshone-Bannock Indian tribe in Region X.

Please note that the funding levels listed above for the Virgin Islands, Guam, American Samoa, CNMI, the Trust Territories and Indian tribes are derived from both the core enforcement and worker protection enforcement budgets.

The FY 92 enforcement base funding level will continue at \$107,100 per state. We will continue to provide a \$20,000 base for worker protection enforcement activities (with funds from the worker protection enforcement budget, discussed in section 2).

For FY 92, the guideline used in determining the base funding level for an enforcement cooperative agreement with a tribe is \$30,000. Budgets must be submitted and approved for all enforcement cooperative agreement programs. Tribal programs requiring less than the \$30,000 guideline will receive funding based on approved budget submittal. Any tribal program requesting more than the base funding level for FY 92 must submit a detailed budget to EPA clearly justifying the need for the proposed funding level, this budget must be approved by the EPA regional office and OCM's Grants and Evaluation Branch. Funds have been set-aside for new tribal grantees which may apply for enforcement cooperative agreements in FY 92. These funds will be redistributed if applications are not received.

The total base funding for the basic enforcement program is \$6,030,100.

#### 1. Formula Funding

Total formula funding available is determined by subtracting the total base amounts from the total appropriation. The total amount of funds available for distribution by formula in FY 92 is \$5,551,500. The formula funds for the enforcement base program will be divided among 49 states, the District of Columbia and Puerto Rico using the following factors and weights:

January 7, 1991, Estimates of Population, U.S. Department of Census, December 30, 1990.	20%
Number of Pesticide Producing Establishments Per state - FIFRA and TSCA Enforcement System printout, March 4, 1991, OCM (Numbers do not include custom blenders.)	20%
Number of Certified Private Applicators per state holding a valid certification on March 6, 1991, OPP	10%

Number of Certified Commercial Applicators per state holding a valid certification on March 6, 1991, OPP. (Total number of individuals certified.) 20%

Estimated number of Farms Per state-Agricultural Statistics Board, national Agricultural Statistics Service, USDA Farm Numbers, August 1989 20%

Estimated Farm Acreage Per state-Agricultural Statistics Board, national Agricultural Statistics Service, USDA Farm Numbers, August 1989 10%

## 2. Allotment Schedule

Allotments for regions and states are obtained by combining the appropriate base and formula funding levels for each state. The FY 92 Allotment Schedule for the pesticide enforcement component is summarized on the chart at the end of this section. More detailed information can be found in appendix XX.

## B. Worker Protection Enforcement

The Office of Compliance Monitoring expects to receive \$2,000,000 in FY 92 compliance cooperative agreement funds to help support worker protection enforcement activities in FY 92. Individual funding allotments for worker protection enforcement activities were determined as described below.

### 1. Base Funding

A base funding level is established for each participating state for worker protection enforcement activities conducted under enforcement grants. (Territories and Indian tribes will receive funds for worker protection enforcement as previously discussed.) For FY 92, the base funding level is \$20,000 for each participating state.

## 2. Formula Funding

Total formula funding available for worker protection is determined by subtracting the total base amounts from the total funding amount dedicated towards worker protection enforcement. The total amount of funds available for distribution by formula in FY 92 is \$579,600.

Formula funds for the worker protection enforcement program will be divided among the 50 states in the program, the District of Columbia and Puerto Rico using the factors and weights described below. These factors were selected based on the best available and appropriate data.

Estimated number of Farm Laborers Per state - Bureau of the Census, U.S. Dept. of Commerce, 1982 Census of Agriculture. (Most recent data compiled state by state.)	25%
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Estimated number of Farms Per state - Agricultural Statistics Board, national Agricultural Statistics Service, USDA Farm Numbers, August 1989.	25%
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Estimated number of nursery and greenhouse sites Per state - Bureau of the Census, U.S. Dept. of Commerce, 1982 Census of Agriculture. (Most recent data compiled state by state.)	25%
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Number of Certified Private Applicators per state holding a valid certification on March 6, 1991, OPP.	10%
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Number of Certified Commercial Applicators per state holding a valid certification on March 6, 1991, OPP. (Total number of individuals certified.)	15%
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## 3. Allotment Schedule

Allotments for regions and states are obtained by combining the appropriate base and formula funding levels for each state. The FY 92 Allotment

Schedule for the worker protection enforcement component is provided at the end of this section.

**C. Adjustments to Initial Allotments**

Regions should not award funds based solely on a state's/tribe's initial allotment, but rather based on the negotiated need of the applicant. The region will base final state/tribal funding decisions for applications on the initial allotment, the demonstrated pesticide enforcement program needs of the applicant, and the exceptional nature of a program.

The Regional Administrator may modify any allotment for an applicant, as necessary, as long as total funding for all states/tribes does not exceed the regional allotment. 40 CFR Part 35.155(a) states that the Administrator or the Regional Administrator may use funds not awarded or committed to an applicant for supplementing awards to other applicants within the same program.

OCM will contact the regions at mid-year to determine the status of available grant funds. An evaluation of the information obtained in this survey will be made by OCM. A reallocation of funds between regions will be made if it is determined that some regions do not need their entire initial allotment while states in other regions demonstrate a need for additional funding.

**D. Regional Allotments for State Worker Protection, Groundwater and/or Endangered Species Enforcement-Related Activities**

One million dollars is included in the President's FY 92 budget for state worker protection, groundwater, and endangered species enforcement-related activities.

These funds are allocated to the regions based on the formula for distribution of the program grants for the aforementioned initiatives. The formula allocation is outlined in appendix XXI.

The resulting distribution per region is as follows:

Region I:	\$73,900	Region VI:	\$96,400
II:	\$52,900	VII:	\$93,800
III:	\$87,600	VIII:	\$90,700
IV:	\$201,300	IX:	\$95,600
V:	\$149,000	X:	\$58,800

The regions will have discretion in allocating these funds to the states for enforcement-related activities addressing worker protection, groundwater and/or endangered species.

Given the above, we will not initiate an FY 92 process for national enforcement special projects.



...correctly to read ...  
 1. On page 85433, column one, in  
 § 173.173(a)(1)(ii), the line  
 "excluded in Federal and/or other" is  
 corrected to read "excluded in  
 Federal or other" ...

2. On page 85433, column one, in  
 § 173.173(a)(1)(ii), the line  
 "excluded in Federal and/or other" is  
 corrected to read "excluded in  
 Federal or other" ...

3. On page 85433, column one, in  
 § 173.173(a)(1)(ii), the phrase "evaluation  
 criteria" in § 173.173 is corrected to read  
 "evaluation criteria in § 173.173".

4. On page 85433, column one, in  
 § 173.173, the phrase "The Secretary  
 will plot" is corrected to read "The  
 Secretary will plot".

Dated: April 29, 1981.

T. H. Bell,

Secretary of Education.

(FPMR, 41 CFR 101-11.6, 101-11.6, 101-11.6)  
 BILLING CODE 4000-01-0

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 173

(EPA-FRL 1750-5)

#### Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations

AGENCY: Environmental Protection  
Agency (EPA).

ACTION: Final rule.

**SUMMARY:** Sections 26 and 27 of the Federal Insecticide, Fungicide, and Rodenticide Act authorize EPA to grant to a qualifying State the primary enforcement responsibility for pesticide use violations, and to rescind such responsibility if the State's pesticide enforcement program is inadequate. This rule sets forth procedures designed to ensure that rescission proceedings are conducted in an orderly and uniform manner.

**EFFECTIVE DATE:** This rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication. EPA will publish a notice of the actual effective date of this rule. See supplementary information for further details.

**FOR FURTHER INFORMATION CONTACT:** Laura Campbell (EN-342), Pesticides and Toxic Substances Enforcement Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-0970.

#### SUPPLEMENTARY INFORMATION:

##### Background

The 1978 Amendments to the Federal Insecticide, Fungicide and Rodenticide

Act (FIFRA) require States to be accorded the primary responsibility for the enforcement of pesticide use violations within the State in certain situations. States can obtain primacy if they enter into a cooperative agreement with the Environmental Protection Agency (EPA) under section 23 of FIFRA or if their use enforcement programs are found by the Administrator of EPA to be adequate under section 26(a).

Section 27(b) of FIFRA authorizes EPA to rescind a State's primacy if the Administrator determines that the State is not adequately discharging its use enforcement responsibilities. Under section 27(b), whenever the Administrator makes such a determination he must send a notice to the State specifying the deficiencies in the State's use enforcement program. If after ninety days from receipt of a notice by a State the Administrator finds that the State has not corrected the deficiencies set forth in the notice, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

On October 8, 1980 these procedures were proposed in the Federal Register (45 FR 65633) and comments were requested by December 2, 1980. After consideration of the comments received, EPA has decided not to change section 173. The significant comments are discussed below.

#### Comments Received

Five comments were submitted in response to the proposal of the rescission procedures. Environmental groups submitted two of the comments and a pesticide company, a State Department of Agriculture and a pesticide trade association each submitted one. None of the comments received suggested any substantive changes in the regulation as proposed. Several of the commentors urged EPA to adopt the proposed procedures and use them where appropriate. One commentor suggested that informal procedures should be available to resolve disputes about the adequacy of a State's pesticide use enforcement program. Section 173.4 of the regulation as proposed set forth an informal mechanism for resolving such disputes. The remaining comments were insubstantial or irrelevant.

#### Initiation of Rescission Proceedings

The rule promulgated today provides the procedures by which EPA intends to effectuate rescission where appropriate. A rescission proceeding is initiated by the issuance of a notice of intent to rescind. Before such a formal step is

taken, however, the Administrator, as a matter of policy, will confer with the State and attempt to resolve the matter through informal negotiations.

The Administrator will issue a notice of intent to rescind if he determines, on the basis of information gathered by the Agency or submitted to EPA by other reliable sources, and after consultation with the appropriate Regional Administrator, that the State is not carrying out, or cannot carry out due to the lack of adequate legal authority, its use enforcement responsibility. (Further discussion of the criteria for making this determination will be contained in an interpretive rule which will soon be proposed for comment). The notice of intent to rescind will list the deficiencies that the Administrator has found in the State program. The notice will also detail the basis for each of the findings.

#### State Response to Notice of Intent To Rescind

States can respond to the receipt of a notice of intent to rescind in one of several ways. First, a State can correct the deficiencies specified in the notice. Second, the State can present evidence to the Administrator at an informal conference which shows that the determinations made in the notice are unfounded. Third, the State and EPA can agree that the State will take the steps necessary to remedy the deficiencies in the State program according to an agreed upon time schedule. This agreement would then be embodied in a written and signed document. Finally, the State, within 60 days of the issuance of the notice, could request a public hearing on the Administrator's determination to rescind its primary enforcement responsibility for pesticide use violations.

If the State corrects the deficiencies in its program, agrees to do so in a written settlement agreement, or convinces the Administrator that the findings made in the notice are not supported by the facts, the Administrator will issue an order withdrawing the notice of intent to rescind and terminating the proceeding. If sixty days elapse from the date of notice of intent was served upon the State without the Administrator issuing such an order, the notice of intent to rescind will be published in the Federal Register. The public may submit comments on the matters discussed in the notice of intent to rescind.

#### Hearings

Upon request of the State within sixty (60) days of the issuance of the notice of intent to rescind, a hearing will be

scheduled and the date for the hearing will be published along with the notice of intent to rescind. Parties, for purposes of proceedings have been defined in the definitions sections of the State and the Agency's Office of Enforcement. However, at the hearing, representatives from the State, EPA, and the public will be able to present evidence relating to the adequacy of the State's pesticide use enforcement program. A presiding officer will preside over the hearing and upon its termination will make a recommended decision on the adequacy of the State's pesticide use enforcement program. The Presiding Officer has the option to recommend that the Administrator (1) find that the State has corrected, or agreed to correct, the deficiencies in its program, (2) find that the State has shown that the determinations made in the notice of intent to rescind were unfounded, or (3) rescind the State's primary enforcement responsibility for pesticide use violations in whole or in part.

#### Agency Decision

The recommended decision of the Presiding Officer will become final 45 days after it is issued unless either of the parties appeal the initial decision to the Administrator or unless the Administrator elects to review the decision on his own initiative (*sua sponte*). After an appeal or *sua sponte* review, the Administrator will issue a final order which adopts, modifies, or sets aside the recommendations made in the Presiding Officer's decision.

The Agency believes that the procedures promulgated today will encourage States and EPA to cooperate in resolving any problems in a State's use enforcement program.

#### Effective Date

On December 17, 1980, President Carter signed the Federal Insecticide, Fungicide and Rodenticide Act Extension Bill (Pub. L. 96-539). This bill amended several sections of FIFRA, including section 25 on rulemaking. Section 4 of the Extension Act adds a new paragraph to FIFRA, section 25(e), which requires EPA to submit final regulations to Congress for review before the regulation becomes effective. In accordance with this requirement, copies of this rule have been transmitted to the appropriate offices in both Houses of Congress. The rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of its publication in the Federal Register. Because the length of this waiting period may be affected by Congressional action, it is not possible, at this time, to specify a date on which

this regulation will become effective. EPA will publish a notice in the Federal Register announcing the end of this "report and wait" period to notify the public of the actual effective date of this regulation.

#### Compliance With the Regulatory Flexibility Act

I hereby certify that this rule will not have a significant economic impact on small entities. The rule only affects States, which are not small entities under the Regulatory Flexibility Act, 5 U.S.C. sec. 601 *et seq.*

#### Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it is entirely procedural in nature, and thus

(1) Does not have an annual effect on the economy of \$100 million or more;

(2) Will not increase costs to consumers, industry, or government; and

(3) Will not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Accordingly, under the authority of sections 25(a) and 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, the new Part 173 set forth below is hereby added to 40 CFR.

Dated: April 8, 1981.

Walter C. Barber,  
Acting Administrator.

### PART 173—PROCEDURES GOVERNING THE RESCISSION OF STATE PRIMARY ENFORCEMENT RESPONSIBILITY FOR PESTICIDE USE VIOLATIONS

#### Sec.

173.1 Applicability.

173.2 Definitions.

173.3 Initiation of rescission proceedings.

173.4 Informal conference and settlement.

173.5 Request for hearing.

173.6 Publication of the notice; scheduling the hearing.

173.7 Hearing and recommended decision.

173.8 Final order.

173.9 Judicial review.

Authority: Secs. 25(a) and 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w and 136w-2).

#### § 173.1 Applicability.

These procedures govern any proceeding to rescind a State's primary enforcement responsibility for pesticide use violations conducted under section

27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. 136 *et seq.*

#### § 173.2 Definitions.

For purposes of this part:

(a) "Administrator" means the Administrator of the United States Environmental Protection Agency or his delegate.

(b) "Notice of intent to rescind" means a notice to a State issued under § 173.3 which initiates a proceeding to rescind the State's primary enforcement responsibility for pesticide use violations.

(c) "State" means the agency or agencies primarily responsible for enforcing pesticide use laws or regulations within the State or jurisdiction undergoing rescission proceedings.

(d) "Party to the proceeding" shall mean the State or the Agency's Office of Enforcement.

(e) "Presiding Officer" means an attorney appointed by the Administrator to conduct the rescission proceeding. The Presiding Officer shall be an employee or representative of the Agency and shall not have had prior direct connection with the specific proceeding except in circumstances where subsequent hearings are in order.

#### § 173.3 Initiation of rescission proceedings.

(a) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out such responsibility, or cannot carry out such responsibility due to the lack of adequate legal authority, the Administrator shall notify the State in writing of his intent to rescind its primary enforcement responsibility, in whole or in part, by serving upon the State a notice of intent to rescind.

(b) The notice of intent to rescind shall:

(1) Specify those aspects of the State's pesticide use enforcement program determined to be inadequate;

(2) Specify the facts which underlie the findings contained in the rescission notice;

(3) Have attached thereto copies of any relevant documents discoverable under the Federal Rules of Civil Procedure and the Freedom of Information Act which contain data relied upon by the Administrator in making his decision to issue the notice;

(4) Have attached thereto a copy of this Part; and

(5) Be sent to the State by certified mail, return receipt requested.

(c) The State may respond in writing to the findings specified in the notice of intent to rescind.

**§ 173.4 Informal conference and settlement.**

(a) After receipt of a notice of intent to rescind, the State may request that an informal conference be held between appropriate State and EPA officials to discuss the findings made in the notice of intent to rescind. The informal conference shall then be held in the State. If the Administrator finds, on the basis of information submitted by the State at the conference, that the deficiencies specified in the notice did not exist or were corrected by the State, the Administrator shall issue an order withdrawing the notice of intent to rescind and terminating the rescission proceeding.

(b) At any time after receipt of a notice of intent to rescind and before the issuance of a final order, the State and EPA may resolve the issues raised in the notice by agreement. Any settlement agreement shall be in writing and signed by the parties and shall:

(1) Detail the deficiencies found in the State program;

(2) Specify the steps the State has taken or will take to remedy the deficiencies; and

(3) Set forth a precise schedule for each remedial action yet to be initiated.

(c) If a written agreement is signed by the parties, the Administrator shall issue an order withdrawing the notice of intent to rescind and terminating the rescission proceeding. If the State does not comply with the terms of the settlement agreement, the Administrator may reissue the notice of intent to rescind.

**§ 173.5 Request for hearing.**

A State may request a hearing before a Presiding Officer not later than sixty (60) days after receipt of a notice of intent to rescind.

**§ 173.6 Publication of the notice; scheduling the hearing.**

(a) If the Administrator has not issued an order terminating the rescission proceeding within sixty (60) days after service of the notice of intent to rescind upon the State, the Administrator shall publish the notice of intent to rescind in the Federal Register. The Administrator may modify the original notice of intent to rescind before its publication by deleting those deficiencies listed in the original notice which have been corrected or which were shown not to have existed. The public may submit

comments upon the matters specified in the published notice of intent to rescind within the time specified therein.

(b) Concurrently with the publication of the notice of intent to rescind, the Administrator shall schedule a hearing in the State if one has been requested by the State. The date, time, and location of the hearing shall be published in the Federal Register along with the notice of intent to rescind.

(c) If a hearing is requested and the Administrator has not issued an order terminating the rescission proceeding, the Administrator shall provide for a hearing as scheduled. Representatives of the State, EPA, and the public may present evidence at the hearing. The Administrator shall appoint a Presiding Officer who shall preside over the hearing and make a recommended decision regarding the adequacy of the State's pesticide use enforcement program. The Administrator, after consultation with the State, may prescribe additional procedures governing the conduct of the hearing.

(d) If a termination order is issued or the hearing is rescheduled after the notice of intent to rescind is published in the Federal Register, such order or notice rescheduling the hearing shall also be published in the Federal Register.

**§ 173.7 Hearing and recommended decision.**

(a) The Presiding Officer shall:

(1) Conduct a fair and impartial hearing, without unnecessary delay;

(2) Ensure that the facts are fully elicited; and

(3) Consider all evidence, comment, and argument which is submitted by persons who will be affected by the outcome of the proceeding and which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. The Presiding Officer may require any prospective witness to make available, in advance of the hearing, a brief summary of his or her testimony.

(b) If, following the close of the hearing, the Presiding Officer finds that the State has corrected, or has agreed in writing to correct, the deficiencies specified in the notice of intent to rescind or has shown that such deficiencies do not exist, the Presiding Officer shall issue a decision recommending that the notice of intent to rescind be withdrawn and that the rescission proceeding be terminated.

(c) If, following the close of the hearing, the Presiding Officer finds that the State has not corrected the deficiencies in its program, the Presiding

Officer shall issue a decision recommending that the State's primary enforcement responsibility for pesticide use violations be rescinded in whole or in part.

(d) The recommended decision of the Presiding Officer shall become final Agency action forty-five (45) days after its service upon the parties and without further proceedings unless (1) an appeal to the Administrator is taken from it by a party to the proceeding, or (2) the Administrator elects, sua sponte, to review the recommended decision.

**§ 173.8 Final order.**

(a) If the State does not request a hearing within the sixty-day time period and the Administrator has not issued an order withdrawing the notice of intent to rescind, the Administrator shall issue a final order as soon as practicable after the time for public comment on the notice of intent to rescind has elapsed. The final order shall either withdraw the notice of intent to rescind and terminate the proceeding or rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

(b) If a hearing has been held and the Presiding Officer has made a recommended decision, then either the Office of Enforcement or the State may appeal the recommended decision to the Administrator or the Administrator may elect to review the recommended decision on his own initiative.

(c) After an appeal or sua sponte review the Administrator shall issue a final order terminating the rescission proceeding or rescinding, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

(d) In no event may the Administrator issue his final decision sooner than ninety (90) days after service of the notice of intent to rescind on a State.

(e) Any final order, or a recommended decision which becomes a final order under § 173.7(c), shall be published in the Federal Register.

**§ 173.9 Judicial review.**

The State may appeal an order rescinding, in whole or in part, its primary enforcement responsibility for pesticide use violations to the appropriate federal court pursuant to section 16 of FIFRA.

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**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 173****(OPP 00159; PH-FRL 2215-3)****Federal Insecticide, Fungicide, and  
Rodenticide Act, State Primary  
Enforcement Responsibilities****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final interpretive rule.

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**SUMMARY:** This rule states EPA's interpretation of several of the key provisions in sections 26 and 27 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), but does not impose substantive requirements on the States. Sections 26 and 27 established a standard and procedure for according States the primary enforcement responsibility for pesticide use violations (primacy). The rule also provides operational substance to the criteria used by EPA for primacy related decisionmaking, and ensures that such decisionmaking is consistent throughout the regions.**EFFECTIVE DATE:** This rule will not take effect before the end of 60 calendar days of continuous session of Congress after

the date of publication. EPA will publish a notice of the actual effective date of this rule. See **SUPPLEMENTARY INFORMATION** for further details.

**FOR FURTHER INFORMATION CONTACT:** Laura Campbell, Pesticides and Toxic Substances Enforcement Division (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. M-2824E, 401 M St., SW., Washington, D.C. 20480, (202-382-5566).

#### **SUPPLEMENTARY INFORMATION**

##### **Background**

In 1978, Congress enacted Pub. L. 95-396 which contained numerous revisions to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*). One of the changes added two new sections to FIFRA, sections 26 and 27, U.S.C. 133w-1 and 133w-2, which together established a standard and procedure for acceding States the primary enforcement responsibility for pesticide use violations (primacy).

Section 26 provides three methods by which a State can obtain primacy. Section 26(a) requires a State to be accorded primacy if the Administrator finds that the State has (1) adopted adequate use laws, (2) adopted adequate procedures for implementing those laws, and (3) agreed to keep such records and make such reports as the Administrator may require by regulation. Section 26(b) allows a State to obtain primacy if the State has an approved section 4 certification plan that meets the criteria set forth in section 26(a), or if a State enters into a cooperative agreement for the enforcement of pesticide use restrictions under section 23.

Section 27 authorizes the Administrator to override or rescind a grant of primacy in certain situations. Section 27(a) requires the Administrator to refer significant allegations of pesticide use violations to the States. If a State does not commence appropriate enforcement action within 30 days of such referral, EPA may bring its own enforcement action.

Section 27(b) authorizes the Administrator to rescind the primary enforcement responsibility of a State if she finds that the State is not carrying out such responsibility. The Administrator initiates a rescission proceeding by notifying the State of those aspects of the State's pesticide use enforcement program which the Administrator has found to be inadequate. If the State does not correct the deficiencies in its program within 90 days, the Administrator may rescind the State's primary enforcement responsibility in whole or in part. EPA

has promulgated procedures which govern the conduct of a proceeding to rescind State primacy. These procedures were published in the Federal Register of May 11, 1981 (46 FR 26058), (40 CFR Part 173).

Section 27(c) authorizes the Administrator to take immediate action to abate an emergency situation where the State is unable or unwilling to respond to the crisis.

As is evident from the above description, several of the operative terms in sections 26 and 27 require further definition. This rule clarifies the meaning of such words as "adequate" and "appropriate" which FIFRA sets forth as the criteria for most of the decisions which will be made under these two sections. The rule also sets guidelines to be used by EPA in making primacy-related decisions, and ensures that such decisionmaking is consistent by limiting, although not eliminating, Agency discretion in the primary area.

Specifically, this rule addresses the following issues:

1. Procedures EPA will follow when referring allegations of pesticide use violations to the State and tracking State responses to these referrals (see Unit I, Subdivision A below).

2. The meaning of "appropriate enforcement action" (see Unit I, Subdivision B).

3. Clarification of when a State will be deemed to have (1) adopted adequate pesticide use laws and regulations, and (2) implemented adequate procedures for the enforcement of such laws and regulations (see Unit II).

4. The criteria the Administrator will use to determine whether a State is adequately carrying out its primary enforcement responsibility for pesticide use violations (see Unit III).

5. The factors which constitute an emergency situation, and the circumstances which require EPA to defer to the State for a response to the crisis (see Unit IV).

##### **Comments Received**

Four comments were received in response to the proposal of the Interpretive Rule. (47 FR 15792, April 20, 1982).

In the proposed rule, a determination of the gravity of violation was based on two factors: (1) risk associated with the violative action, and (2) risk associated with the pesticide. Some of the comments stated that EPA should determine the gravity of each violation based on whether actual harm occurred as a result of the violation. If the Agency were to determine the seriousness of a violation based on the actual harm which occurred in a particular case,

pesticide users would be encouraged to take the risk of misusing a pesticide, with the hope that no actual harm would result from their unlawful act. Congress charged EPA with regulating pesticide use in a manner which will prevent unreasonable risk of pesticide exposure to man or the environment. Congressional intent would not be carried out if EPA encouraged pesticide users to engage in unsafe activities by not charging violations in cases where no actual harm occurred. For this reason, the final rule retains the language of the proposed rule.

Two comments concerning the imposition of criminal penalties for pesticide misuse were received. One comment stated that Congress intended criminal sanctions to be applied only in cases involving unlawful manufacture of pesticides. Nothing in FIFRA or its legislative history so limits the use of criminal penalties. The only criterion in the statute for the imposition of criminal penalties is that a violation is "knowing". The language referring to criminal penalties in the proposed rule has been largely retained in the final rule.

Another comment expressed the concern that imposing more stringent sanctions where violations are found to be "knowing" penalizes persons who are informed about the law. Section 14 of FIFRA states that "knowing" violations are subject to criminal penalties. Knowledge of the violator is a valid criterion to use in determining gravity because of a "knowing" violation shows a disregard for the law.

One comment stated that no State with more stringent pesticide use laws than the Federal law should be granted primacy. Although EPA cannot require a State to enact a pesticide use law that is more stringent than FIFRA, there is no prohibition against granting primacy to a State whose pesticide use law is more stringent.

One comment suggested a change in the requirement that State laboratories conducting sample analysis participate in EPA's check sample program. The comment stated that the National Enforcement Investigation Center (NEIC) check sample program should be coordinated with the American Association of Pest Control Officials (AAPCO). The NEIC check sample program is currently coordinated with the AAPCO check sample program. The rule has been changed to reflect this comment.

## Further Information on Effective Date of This Rule

On December 17, 1980, the Federal Insecticide, Fungicide, and Rodenticide Act extension bill (Pub. L. 96-539)

time law. This bill amended several provisions of FIFRA, including section 25 on rulemaking. Section 4 of the Extension Act adds a new paragraph, section 25(e), to FIFRA which requires EPA to submit final regulations to Congress for review before the regulations become effective. Copies of this rule have been transmitted to appropriate offices in both Houses of Congress.

Under section 4 of the 1980 FIFRA Extension Act, this rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. Since the actual length of this waiting period may be affected by Congressional action, it is not possible, at this time, to specify a date on which this regulation will become effective. Therefore, at the appropriate time EPA will publish a notice announcing the end of the legislative-review period and notifying the public of the actual effective date of this regulation.

## Compliance With the Regulatory Flexibility Act

I hereby certify that this rule will not have a significant economic impact on small entities. The rule affects only pesticide control agencies, which are not small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

## Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major since it is interpretive in nature and does not contain new substantive requirements. The regulation:

1. Does not have an annual effect on the economy of \$100 million or more.
2. Will not substantially increase costs to consumers, industry, or government.

3. Will not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291, (Sec. 25(a)(1) (7 U.S.C. 138w)). [Note: This rule will not appear in the Code of Federal Regulations.]

## L Appropriate Enforcement Action.

A. *Procedures Governing Referrals.* 1. General. Section 27(a) requires EPA to

refer to the States any information it receives indicating a significant violation of pesticide use laws. If a State has not commenced appropriate enforcement action within 30 days, EPA may act on the information.

Given current resource limitations, EPA is not in a position to monitor State responses to every allegation of pesticide misuse referred by the Agency. Rather, the Agency will focus its oversight activities on evaluating the overall success of State pesticide enforcement programs, and will track, on a case-by-case basis, only those allegations involving particularly serious violations. Such "significant" allegations will be formally referred to the States and tracked by EPA, while other less serious complaints will be forwarded to the States for information purposes only.

2. *Criteria for significant cases.* To determine which alleged violations are sufficiently significant to warrant formal referral and tracking, the regions will go through a two step process. First, the regions, in consultation with each State, will identify priority areas for referral. These priority areas will consist of those pesticide activities in the State which present the greatest potential for harm to health or the environment (e.g. the application of a pesticide by a certain method to a particular crop, such as ground application of endrin to apple trees). The selection of these priority areas will depend primarily on the results of pesticide enforcement program evaluations conducted by the States and the regions. The priority areas will be revised on an annual basis based upon the effectiveness of the program in reducing the harm associated with pesticide use.

Thereafter EPA will determine on a case-by-case basis which allegations in these priority areas involve sufficiently "significant" violations to be formally referred to the State and tracked. If a complaint received by EPA alleges a minor infraction which clearly presents little or no danger to health or the environment, or if the information contains patently spurious allegations, such as those from sources which have repeatedly proved unreliable, the matter will be forwarded to the State for information purposes only.

3. *The 30-day time period.* The Agency interprets the term "commence appropriate enforcement action" in section 27(a) to require States to initiate a judicial or administrative action in the nature of an enforcement proceeding, if one is warranted. Starting an investigation of the matter would not be sufficient. If the State does not commence an appropriate administrative, civil, or criminal

enforcement response, EPA would then be permitted, although not required, to bring its own enforcement action.

Although section 27(a) permits EPA to act if the State has not commenced an enforcement action within 30 days, the Agency recognizes that States may not be able to complete their investigation of many formal referrals in so short a time. The time needed to investigate a possible use violation will vary widely, depending upon the nature of the referral. A referral which simply conveys an unsubstantiated allegation will usually require more investigation than a referral which partially or fully documents a pesticide use violation. Consequently, the Agency wishes to develop a flexible approach towards the tracking of referrals.

To accomplish this objective, EPA is adopting a system in which the referral process is broken down into two stages, investigation and prosecution.

4. *The investigation stage.* Following the formal written referral of an allegation of a significant pesticide use violation, the appropriate regional pesticide official will contact the State to learn the results of the investigation and the State's intended enforcement response to the violation. If the State has not conducted an adequate investigation of the alleged violation, the region may choose to pursue its own investigation or enforcement action after notice to the State. As a general rule, however, the regional office will attempt to correct any deficiencies in the investigation through informal communication with the State.

An investigation will be considered adequate if the State has (1) followed proper sampling and other evidence-gathering techniques, (2) responded expeditiously to the referral, so that evidence is preserved to the extent possible, and (3) documented all inculpatory or exculpatory events or information.

5. *The prosecution stage.* After completion of the investigation, the State will have 30 days, the prosecution stage, to commence the enforcement action, if one is warranted. An appropriate enforcement response may consist of required training in proper pesticide use, issuance of a warning letter, assessment of an administrative civil penalty, referral of the case to a pesticide control board or State's Attorney for action, or other similar enforcement remedy available under State law. The 30-day period may be extended when necessitated by the procedural characteristics of a State's regulatory structure (see Unit V.A. Hypothetical 1).

If, after consultation with the State, EPA determines that the State's intended enforcement response to the violation is inappropriate (see subdivision B), EPA may bring its own action after notice to the State. Regional attorneys will not, however, initiate an enforcement proceeding sooner than 30 days after the matter was referred to the State.

At times, a State may find that the particular enforcement remedy it views as the appropriate response to a use violation is not available under the State's pesticide control laws. Therefore the State may, at any time, request EPA to act upon a violation utilizing remedies available under FIFRA. In these instances, of course, EPA will immediately pursue its own action, if one is warranted.

To illustrate better the proposed referral system, two hypothetical situations are described in Unit V. A.

**B. Appropriate Enforcement Action. 1. General.** After the Agency learns of the enforcement action, if any, the State proposes to bring against the violator, the EPA regional pesticide office will consider, in consultation with the State, whether the proposed action is "appropriate", relative to the remedies available to the State under its pesticide control legislation. EPA interprets the modifier "appropriate" in section 27(a) of FIFRA to require that the severity of the proposed enforcement action correlate to the gravity of the violation.

It is not possible in this Interpretive Rule to prescribe the specific enforcement action which will constitute an appropriate response to a particular violation. There are too many variables which will influence the treatment of a use violation, including the disparity between the types of enforcement remedies available under the various State pesticide control statutes. This document can, however, establish criteria to be employed in evaluating the appropriateness of a proposed State enforcement action. More detailed guidance on evaluating relative gravity is contained in EPA's "Guidelines for the Assessment of Civil Penalties under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended", published in the Federal Register of July 31, 1974 (39 FR 27711). The Guidelines establish dollar amounts to be applied under the Federal statute to use violations in civil penalty proceedings. Regional personnel can use these figures as a guide in evaluating the gravity of a particular violation. The Agency will not require that a State response to a violation have a monetary impact equivalent to that of a civil penalty which EPA would impose under

the Guidelines. Rather, the dollar amounts contained in the penalty matrices can be used by regional personnel to define the relative gravity of a violation by comparing the figures applicable to different violations.

**2. Gravity of the violation.** The Agency believes that the gravity of a pesticide use violation is dependent upon the risk the violation poses to human health and the environment. The factors which determine the degree of risk presented by a use violation can be divided into two categories: factors related to the particular action which constituted the violation and factors related to the pesticide involved in the incident.

**a. Risk associated with the violative action.** The circumstances surrounding the violative action partially determine the risk the violation presents to human health or the environment. To assess the degree of such risk, State and regional personnel should ask such questions as:

i. Did the violation occur in a highly populated area, or near residences, schools, churches, shopping centers, public parks or public roads, so that health was endangered?

ii. Did the violation occur near an environmentally sensitive area, such as a lake or stream which provides drinking water to the surrounding community, a wildlife sanctuary, a commercial fishery, or other natural areas?

iii. Did a structural application threaten to contaminate food or food service equipment?

iv. Did the violation have the potential to affect a large or a small area?

v. What was the actual harm which resulted from the violation?

vi. Was the nature of the violation such that serious consequences were likely to result?

This last question is designed to take into account the variation in the inherent risk associated with different categories of use violations. For example, a drift violation resulting from improper aerial application generally presents a greater risk of harm than a storage violation, since the latter infraction does not necessarily involve the improper exposure of the pesticide to the environment.

**b. Risk associated with the pesticide.** The factors which will be crucial in evaluating the risk associated with the pesticide itself include:

i. The acute toxicity of the pesticide or pesticides involved in the incident. The toxicity of a pesticide will be indicated by the "human hazard signal word" on the labels (see 40 CFR 162.10). "Danger" or "Poison" are indicators of a highly toxic pesticide while "Warning" and

"Caution" signify successively less toxic substances.

ii. The chronic effects associated with the pesticide, if known.

iii. The amount of the pesticide involved in the incident, relative to the manner of application (e.g., aerial versus structural).

iv. Other data concerning the harm a pesticide may cause to human health or the environment, such as data concerning persistence or residue capability.

An analysis of the interrelationship between these two categories of risk factors should yield a notion of the relative gravity of the violation and the severity of the action which should be taken in response.

**3. Category of applicator, size of business, and history of prior violation.** Gravity is not the only factor which EPA will take into account in evaluating the propriety of an enforcement action. Section 14 of FIFRA requires that distinctions in the severity of an enforcement response be made between the categories of persons who commit use violations. The intent of Congress, as expressed in section 14, is that commercial pesticide applicators who violate use requirements will be subject to more stringent penalties than other persons who violate use restrictions. Congress also envisioned that the size of the violator's business will be a factor in determining the severity of the penalty. In addition, section 14 distinguishes between violators who have committed previous infractions and those who are first offenders. Thus, the issuance of a warning letter by a State to a person or firm who has been repeatedly warned in the past about a certain violation would not generally be considered an appropriate response to the violation.

**4. Knowing violations; criminal penalties.** The state of mind of the violator is another important consideration. In extreme circumstances where the civil penalty remedy is inappropriate, it is the Agency's policy to pursue a criminal action against persons who knowingly violate a provision of FIFRA. EPA will be particularly interested in pursuing criminal prosecution for those violations which involve a death or serious bodily injury or in which the violator has demonstrated a reckless or wanton disregard for human safety, environmental values or the terms of the statute. To be appropriate, a State's response to a knowing violation under the circumstances indicated above must be similarly severe.

**5. Deterrence.** It should be noted that the appropriateness of an enforcement



action is a dynamic, rather than a static, concept. Because it is dynamic, penalties must be periodically evaluated. If a certain violation is occurring more frequently, the leniency of the remedies which have been applied to this infraction in the past should be questioned. Consequently, what is appropriate in one year may be viewed as an inadequate response in the next.

The factors described above, together with the aforementioned Guidelines, should help to clarify the Agency's

definition of "appropriate enforcement action." To understand better how the criteria described above can be used to evaluate whether a proposed State enforcement action is appropriate, the reader is referred to the hypothetical fact situations in Appendix B.

## II. Criteria Governing Grants of Primacy

Section 25 of FIFRA sets forth the general criteria which apply to EPA's decision whether to grant primacy to a State:

"(a) 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; *Provided*, 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.

"(b) Notwithstanding the provisions of subsection (a) of this section, any State that enters into a cooperative agreement with the Administrator under section 23 of this Act for the enforcement of pesticide use restrictions shall have the primary enforcement responsibility for pesticide use violations. Any State that has a plan approved by the Administrator in accordance with the requirements of section 4 of this Act that the Administrator determines meets the criteria set out in subsection (a) of this section shall have the primary enforcement responsibility for pesticide use violations. The Administrator shall make such determinations with respect to State plans under Section 4 of this Act in effect on September 30, 1978 not later than March 31, 1979.

Thus, a State may obtain primacy in 3 ways: (1) by demonstrating that the merits of its use enforcement program, or of its approved certification program, satisfy the two main criteria in section 25(a), (adequate laws and adequate procedures implementing those laws), or (2) by entering into a cooperative agreement for the enforcement of use restrictions, provided the terms of the agreement do not specify otherwise. The Agency will also evaluate the adequacy of a State's use enforcement program before conferring primacy by this latter method.

**A. Adequate Laws and Regulations.** To be considered adequate, a State's pesticide control legislation must address at least the following areas:

1. **Use restrictions.** State pesticide control legislation will be considered adequate for purposes of assuming full primacy if State law prohibits those acts which are proscribed under FIFRA and which relate to pesticide use. The activities presently proscribed under FIFRA include:

a. Use of a registered pesticide in a manner inconsistent with its label (FIFRA section 12(a)(2)(C)).

b. Use of a pesticide which is under an experimental use permit contrary to the provisions of the permit (section 12(a)(2)(H)).

c. Use of a pesticide in tests on humans contrary to the provisions of section 12(a)(2)(P).

d. Violation of the provision in section 3(d)(1)(c) requiring pesticides to be applied for any restricted use only by or under the direct supervision of a certified applicator. Violations of suspension or cancellation orders are not considered use violations for purposes of the primacy program.

States may be granted partial primacy if they regulate less than all categories of use violations. For example, EPA may in the future decide to issue "other regulatory restrictions" on use under section 3(d)(1)(C)(ii), (such as a requirement to notify area residents before pesticide spraying). If such a restriction were issued, (and not reflected on pesticide product labels), each State would automatically have partial primacy extending to all of the categories listed above which are proscribed by State law, unless the State already has authority to enforce such restrictions. A State with partial primacy would obtain full primacy by enacting a prohibition tracking the

section 3(d)(1)(C)(ii) restriction.

2. **Authority to enter.** To carry out effectively their use enforcement responsibilities, State officials should be able to enter, through consent, warrant, or other authority, premises or facilities where pesticide use violations may occur. States should also have concomitant authority to take pesticide samples as part of the use inspection process.

3. **Flexible remedies.** Finally, State legislation must provide for a sufficiently diverse and flexible array of enforcement remedies. The State should be able to select from among the available alternatives an enforcement remedy that is particularly suited to the gravity of the violation. Without such flexibility, a State may frequently be forced to underpenalize violators, and thereby fail significantly to deter future use violations. Thus, in order to satisfy the "adequate laws" criterion, States should demonstrate that they are able to:

a. Issue Warning Letters or Notices of Noncompliance;

b. Pursue administrative or civil actions resulting in an adverse economic impact upon the violator, e.g., license or certification suspensions or civil penalty assessments; and

c. Pursue criminal sanctions for knowing violations.

**B. Adequate Procedures for Enforcing the Laws.** In order to obtain primacy, States must not only demonstrate adequate regulatory authority, but must also show that they have adopted procedures to implement the authority. These procedures must facilitate the quick and effective prevention, discovery, and prosecution of pesticide use violations.

1. **Training.** One step towards this objective is the training of enforcement personnel. At a minimum, States, in cooperation with EPA, should implement procedures to train inspection personnel in such areas as violation discovery, obtaining consent, preservation of evidence, and sampling procedures. Enforcement personnel should be adequately versed in case development procedures and the maintenance of proper case files.

Instruction in these techniques should take the form of both on-the-job training and the use of prepared training materials. The Agency also considers a continuing education program to be a crucial training procedure, so that enforcement personnel can be kept abreast of legal developments and technological advances.



**2. Sampling techniques and laboratory capability.** Requests for primacy should also show that the State is technologically capable of conducting a use enforcement program. States must have ready access to the equipment necessary to perform sampling and laboratory analysis, and should implement a quality assurance program to train laboratory personnel and protect the integrity of analytical data. Laboratories conducting sample analyses must also agree to participate in EPA (NEIC) Check Sample programs which are designed to ensure minimum standards of analytical capability. (Such a program is already operational for formulation samples, and a residue sample program is also under consideration). The EPA Check Sample program is coordinated with the Association of American Pesticide Control Officials (AAPCO) to reduce unnecessary duplication of effort. The EPA will be guided in evaluating the adequacy of State analytical procedures by official compilations of approved analytical methods, such as the Food and Drug Administration's (FDA) Pesticide Analytical Manual, the CIPAC (Collaborative International Pesticides Analytical Council) Handbook, the EPA Manual of Chemical Methods for Pesticides, and Official Analytical Chemists Analytical Procedures. For additional guidance on adequate sampling techniques, States should consult EPA's FIFRA Inspectors Manual or contact the appropriate regional office.

**3. Processing complaints.** Since a significant portion of pesticide use violations are identified through reports from outside EPA or the State lead agency, the State must implement a system for quickly processing and reacting to complaints or other information indicating a violation. An adequate referral system should contain:

- a. A method for funneling complaints to a central organizational unit for review.
- b. A logging system to record the receipt of the complaint and to track the stages of the follow-up investigation.
- c. A mechanism for referring the complaint to the appropriate investigative personnel.
- d. A system for allowing a rapid determination of the status of the case.
- e. A procedure for notifying citizens of

the ultimate disposition of their complaints.

**4. Compliance monitoring and enforcement.** Along with the above described enforcement procedures, States must provide assurance that sufficient manpower and financial resources are available to conduct a compliance monitoring program, i.e., either planned or responsive use inspections. In addition, States must implement procedures to pursue enforcement actions expeditiously against violators identified through compliance monitoring activities.

The Agency also believes that program planning and the establishment of enforcement priorities is an integral part of an adequate enforcement program. Such planning, taking into account the national program priorities as manifested through the grant negotiation process, as well as the priorities specific to the individual State, will help assure that compliance

"(b) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out (or cannot carry out due to the lack of adequate legal authority) such responsibility, the Administrator shall notify the State. Such notice shall specify those aspects of the administration of the State program that are determined to be inadequate. The State shall have ninety days after receipt of the notice to correct any deficiencies. If after that time the Administrator determines that the State program remains inadequate, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

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.

**A. Adequate Laws.** The legal authority can conduct an adequate use enforcement program is a criterion which affects both the decision to grant primacy and the decision to rescind it. Within the context of rescission, the Administrator will assess the impact of any amendments or supplements to the State's pesticide use laws and regulations. If legislative changes have adversely affected the State's ability to collect information or bring enforcement actions, the State may be subject to a rescission action on grounds of inadequate laws.

**B. Adequate Procedures.** In determining whether a State which has adequate legal tools is carrying out its use enforcement obligations, the Agency will examine the efficacy of the

monitoring and enforcement resources are properly allocated.

**5. Education.** States should implement a program to inform their constituencies of applicable pesticide use restrictions and responsibilities. Examples of education methods include disseminating compliance information through cooperative extension services, seminars, publications similar to the Federal Register, newspapers, and public assistance offices where persons can call to ask questions or report violations. Such an educational program will promote voluntary compliance and is essential to effective enforcement. States should also develop procedures for soliciting input from the public regarding the administration of the pesticide use enforcement program.

### III. Criteria Governing Rescission of Primacy Under Section 27(b)

Section 27(b) authorizes the Administrator to rescind primacy from a State in certain situations:

procedures adopted by the State to implement its pesticide laws. The Agency will be particularly interested in the remedies the State has actually applied to the various use violations. The lack of sufficient correlation between the gravity of a use violation and the severity of the enforcement response would be evidence that the State's arsenal of remedies is not being applied in a flexible manner.

In addition, EPA will evaluate each program element listed in Unit II.B., in light of the performance of the State during the period the State had primary use enforcement responsibility.

**1. Training.** The Administrator will note whether any difficulties encountered by the State in enforcing pesticide use restrictions have resulted from a lack of adequate training of State enforcement personnel.

**2. Sampling techniques and laboratory capability.** The Administrator will consider whether the State's sampling techniques and

analytical capabilities are enhancing or hindering the State's ability to unearth and prosecute successfully persons who misuse pesticides. Another important consideration will be the degree to which State laboratory and sampling procedures have kept pace with developments in analytical technology.

3. *Processing complaints.* The Administrator will examine whether complaints have been processed quickly and efficiently. The degree to which citizens alleging a use violation seek redress from EPA after first directing their complaints to the State will be considered. In addition, the Administrator will take into account the performance of the State in responding to allegations referred to the State by EPA under section 27(a) of FIFRA.

4. *Compliance monitoring and enforcement.* Under this element, the Administrator will compare the State's level of compliance monitoring activities with that of other comparable States. The EPA will review State case files to determine whether the State has aggressively investigated a case before deciding on the disposition of the matter. The EPA will also investigate whether a State's Attorney General's office or other prosecutorial authorities have demonstrated a willingness to pursue cases referred by the State's pesticide control lead agency.

The Agency will examine whether State enforcement resources have been directed towards the more significant enforcement problem areas, and whether enforcement priorities have been reevaluated as the demands of an adequate program change over time.

5. *Education.* The Administrator will evaluate whether the State's education program is encouraging voluntary compliance with pesticide use restrictions. As part of this process, the Administrator will note those use violations which are at least partially attributable to the violator's lack of familiarity with applicable laws and regulations. The Administrator will also review State procedures for facilitating public participation in the enforcement program.

These criteria are indices of the adequacy of a State's use enforcement program, but they do not conclusively determine whether a State is discharging its primary responsibilities. Since the Agency's goal is to protect the public from the risks associated with pesticides, one of EPA's central inquiries will be whether the State's primary program assures compliance with pesticide use restrictions. EPA, in evaluating State program adequacy, will consider both the deficiencies of the

program and the success of the program in achieving compliance.

#### IV. Emergency Response

Notwithstanding other provisions of sections 26 and 27, the Administrator may, after notification to the State, take immediate action to abate emergency situations if the State is "unwilling or unable adequately to respond to the emergency."

FIFRA does not define "emergency conditions." Other EPA-administered statutes, however, characterize emergencies in fairly consistent terms. The consensus of these statutes is that an emergency presents a risk of harm to human health or the environment that is both serious and imminent, and that requires immediate abatement action.

Examples of use-related emergency situations are:

1. Contamination of a building by a highly toxic pesticide.

2. Hospitalizations, deaths, or other severe health effects resulting from use of a pesticide.

3. A geographically specific pattern of use or misuse which presents unreasonable risk of adverse effects to health or sensitive natural areas. This situation may occur, for example, if a hazardous pesticide is consistently misused in a particular area so that the net effect is the creation of substantial endangerment to the environment, such as runoff into a water supply.

A. *"Unwilling".* When EPA learns of an emergency situation, Agency representatives must notify the affected State. These representatives will try to obtain a commitment from the State as to (a) what the State is capable of doing in response to the situation, and (b) when the State intends to respond to the crisis.

Emergencies, by nature, require the quickest possible response. In most cases, due to proximity, the State will have the opportunity to be first on the scene. If the State manifests an unwillingness to respond rapidly to the situation, or if the State cannot give assurances that it will respond more quickly than EPA could respond, Agency emergency response teams will be activated.

B. *"Unable".* The EPA will immediately take action to abate an emergency if the State is unable to do so. The Agency interprets "unable" to mean that either the State does not have the authority to adequately respond or that the State is incapable of solving the problem due to the lack of technology or resources.

1. *Authority.* The EPA can utilize its authority in section 16(c) of FIFRA to seek, in conjunction with the

Department of Justice, a district court order preventing or restraining misuse of a pesticide. States should also be able to address a use-related emergency in this manner or by the rapid issuance of an enforceable stop-use order or other similar means. If the State lacks this authority and the emergency conditions warrant a legal response in the nature of specific enforcement or equitable relief, EPA may initiate its own action after notice to the State.

2. *Technical capability.* Some emergency situations may present problems which the States are technologically incapable of solving. In these instances, if EPA possesses the requisite technology or equipment, the Agency will immediately respond to the crisis. For example, where a dissolved organic pesticide has contaminated a surface water system, EPA would activate its portable advanced waste treatment unit, a resource that is not generally available to the States.

The EPA will also take action if the State cannot rapidly commit the necessary manpower to the emergency situation. In most cases EPA will not, however, initiate a response on this basis if the State has developed an emergency response plan detailing the procedures to be followed in counteracting a pesticide emergency.

#### V. Hypothetical Situations

In reading the hypotheticals in Units A and B, assume that the cases discussed fall under priority referral areas discussed in Unit LA.2.

A. *Action by Citizen. Hypothetical 1.* EPA refers to the State a citizen's allegation that an aerial applicator has allowed pesticides to drift over his property. After 25 days, the EPA Region obtains the results of State's investigation and learns that the State plans to issue a warning letter to the applicator. The EPA advocates a more firm response and, after discussion, the State agrees to suspend the applicator's certification. The State certification board does not meet, however, until two months later. In this instance, the Region may decide to extend the normal 30 day prosecution stage to accommodate the schedule of the board.

*Hypothetical 2.* A citizen calls EPA with information concerning a fish kill which occurred in a stream near his residence. The citizen claims that he reported his information to the State, but State officials have not responded to his complaint. The EPA's Regional official calls the State, and learns that the State did indeed know of the problem, but has not yet had the opportunity to investigate the allegation. The Regional

official, believing the allegation to be significant, formally refers the complaint to the State, and the State agrees that the matter should be investigated within 30 days. After 20 days, the Region learns the State has not yet begun its investigation. In this case, the Region begins its own inquiry into the matter, and may commence its own enforcement action, after notice to the State, provided that 30 days have elapsed from the date of the referral.

**B. Action by State.** In both of these hypotheticals, assume that the State has chosen a Warning Letter as the appropriate enforcement response.

**Hypothetical 1.** Mr. Smith operates a one-man crop dusting company. Smith is hired to spray Herbicide A over a power company's lengthy right-of-way. The right-of-way is bounded on one side by a residential development and on the other by a wooded area. Smith performs the aerial application amidst high swirling winds in contravention of the instructions on the herbicide's label. A significant portion of the herbicide drifts onto the wooded area. Herbicide A, which contains the hazard word "danger" on its label, is a highly toxic and persistent restricted use pesticide. Smith has no record of prior pesticide-related violations with government pesticide control offices.

The Agency would consider the issuance of a warning letter to be an appropriate response to this violation. **Risk associated with the violative action.** Fortunately in this instance, the drift did not result in damage to humans or sensitive environmental areas. But at the time the violation was committed, the risk that harm would result from the misuse was quite significant, given the high swirling winds and the proximity of a residential neighborhood. Only chance prevented the herbicide from drifting into an inhabited area. The risk of harm was also increased by the fact that a great deal of land was subject to drift given the length of the target area.

**b. Risk associated with the pesticide.** Herbicide A is labelled "danger" and is therefore an acutely toxic Category I pesticide under 40 CFR 162.10. The harm that would result from exposure to this persistent substance is substantial, regardless of whether chronic effects or residue properties have been ascribed to it. In addition, a large amount of herbicide A was involved in the violation.

**c. Other factors.** Smith is a commercial applicator under FIFRA and would be subject to the maximum penalty. As a mitigating factor, however, Smith could point to the absence of prior FIFRA violations.

In summary, since Smith's actions were highly likely to result in serious harm to human health, his drift violation warrants a severe enforcement response, such as assessing a fine or suspending his certification. Despite Smith's clean record, a warning letter would not be deemed "appropriate enforcement action."

**Hypothetical 2.** A small food processing firm which markets frozen TV dinners utilizes company maintenance personnel to accomplish its pest control needs. No particular training is provided for such employees but they are instructed to read and follow the label directions. They are provided all appropriate application equipment and protective clothing. A company employee applied a non-persistent general-use (Category IV) pesticide which was registered for structural pest control to combat a particularly serious cockroach infestation. Despite label instructions requiring the user to avoid contaminating food, food containers, or cooking utensils, the employee applied the pesticide directly upon and below counter tops and related surfaces in the room where food cooking racks are stored. The application took place late Friday afternoon. The cooking racks were not utilized again until Monday morning. An inspection took place on Monday morning. This was the third pesticide use inspection which the State had conducted at the firm in the last four years. None of the prior inspections had revealed a pesticide-related violation. Residue samples taken Monday morning revealed no trace residue of the pesticide on the treated surfaces.

Since the violation constitutes a first offense by an "other person" under section 14(a)(2) of FIFRA, the maximum federal enforcement response would be a Notice of Warning. Accordingly, the Warning Letter issued by the State would constitute an appropriate enforcement action.

**a. Risk associated with the violative action.** The direct application of any pesticide to a cooking rack in a food processing establishment poses some risk of exposure to humans. Although the pesticide used in this case was not applied in great amounts or over large areas, the inherent risk associated with the violation is relatively high, since the violation results in the introduction of the pesticide into non-target surfaces with the likelihood of human exposure.

**b. Risk associated with the pesticide.** In this instance, the risk associated with the pesticide itself is relatively small. This Category IV pesticide is not acutely toxic or persistent, and is not known to

cause any chronic effects. Sample analysis revealed no trace of the product at the time the exposed cooking racks were to be used.

**c. Other factors.** Under FIFRA, the issuance of a Notice of Warning is the maximum enforcement response to a use violation committed by a private applicator with no history of prior violations. Thus, the Agency would, of course, view the proposed State enforcement action as appropriate. If the violation were repeated, a more stringent enforcement action would be warranted.

Dated: December 22, 1962

John W. Hernandez, Jr.,

Acting Administrator.

(FIFRA Doc. 234 Filed 1-4-63; 246 am)

CALLING CODE 1230-00-00



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

OCT 2 1985

OFFICE OF  
PESTICIDES AND TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: FIFRA §§26 and 27 and SPMS Measures

FROM: A. E. Conroy II, Director  
Office of Compliance Monitoring

TO: Addressees

*AEC*  
*Conroy II*

On July 3, 1985, Jim Vickery of the Office of Enforcement and Compliance Monitoring (OECM) transmitted by electronic mail a memorandum on the proposed Strategic Planning and Management System (SPMS) measures for FY 1986. The major revision dealt with reporting Significant Non-Compliers (SNC). The package on SPMS measures redefined "Significant Violator" as any violator which meets the criteria for significant cases set forth in 40 CFR 173 and the Interpretive Rule governing FIFRA §§26 and 27 referrals.

In reviewing how the Regions have implemented FIFRA §§26 and 27, the Office of Compliance Monitoring (OCM) has noted that some Regions do a good job, e.g., Region IX in Hawaii. Others are not following the procedures set forth in the Interpretive Rule and the Procedures on Rescission of Primacy. Because the SPMS measures are mandatory now, I am sending you the attached document which contains the requirements currently found in the Interpretive Rule and 40 Part 173. In conjunction with the SPMS operation, Dr. Jake Mackenzie, Western Regional Compliance Director, OCM, will be reviewing FIFRA §§ 26 and 27. He will use the SPMS data generated to evaluate and assess the need for changes to §§ 26 and 27.

In order to facilitate the transition to the new SPMS measures, John Seitz, Chief Executive Officer, OCM, plans to visit each of the Regions within the next four weeks to discuss the new measures and any problems which you may be having with them. He will be contacting you individually to set up a specific date.

In addition, I would welcome any comments you have on the attached FIFRA §§26 and 27 document. Please send your comments to Phyllis Flaherty, Chief, Policy and Analysis Branch. If you have any questions on the document, she can be reached at FTS 382-7826.

Attachment

## STATE OVERSIGHT

### FIFRA §§26 AND 27

#### BACKGROUND

- ° FIFRA §§26 and 27 establish a standard and procedure for giving States primacy. Section 27 authorizes the Administrator to override or rescind a grant of primacy in certain situations.
- ° Three documents currently govern how we oversee the States and what happens if the State fails to take appropriate actions for the enforcement of the use provisions of the Act. These documents are:

FIFRA State Primary Enforcement Responsibilities: Final Interpretive Rule. Published at 48 FR 404 on January 5, 1983.

Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations, 40 CFR Part 173.

Annual State Cooperative Enforcement Agreement Guidance.

- ° Section 27(c) authorizes the Administrator to take immediate action to abate an emergency situation where the State is unable or unwilling to respond to the crisis.
- ° EPA is not in a position to monitor State responses to every allegation of pesticide misuse referred by the Agency. Rather, the Agency will focus on oversight activities on evaluating the overall success of State pesticide enforcement actions, and will track, on a case by case basis, only those allegations involving particularly serious violations, i.e., those agreed to in advance.
- ° Such significant allegations will be formally referred to the State while other less serious complaints will be forwarded for information purposes only.

## PROCEDURES FOR EPA TO TAKE ACTION FOR USE VIOLATIONS

### Authority

- ° Section 27 authorizes EPA to bring its own action if the State does not commence appropriate enforcement action within 30 days of such referral.

### Prior to EPA Taking Action

#### I. Prior to Referral

- ° The Region, in consultation with each State, identifies priority areas for referral.

Priority areas should be those which present the greatest potential for harm and depend on the results of pesticide enforcement evaluations conducted by the Regions and States. This is to be done prior to a formal referral.

- ° After identifying priority areas, the Region determines on a case by case basis which allegations in the priority areas involve sufficiently significant violations to be formally referred and tracked.
- ° After a referral is formally made, the determination as to whether a State commences appropriate action involves a two phase determination regarding the : 1) investigation stage and 2) the enforcement response stage.

#### II. Investigation Stage

- ° For formal referrals only, the Region contacts the State to learn the results of the investigation and the State's intended enforcement response.
- ° If the State has not conducted an adequate investigation, the Region should attempt to correct any deficiencies in the investigation through informal communication with the State.
- ° An investigation is adequate if the State followed proper sampling and other evidence gathering techniques and responded expeditiously to the referral and documented the facts of the case.

- ° If after discussions with the State, no agreement is reached on correcting the deficiencies in a specific case, the Region can act after 30 days. Concurrence from Headquarters is recommended. Please note that these procedures do not apply to referrals or requests from the State for EPA to inspect.
- ° In those cases where the Region encounters a pattern of inadequate investigations, the Region should discuss this with the State during evaluations and grant negotiations and work towards resolving the problem. Solutions may include providing additional training or equipment.

### III. Enforcement Response Stage

- ° For formal referrals, the Region contacts the State regarding the State's intended enforcement response.
- ° The Region reviews the intended response to determine if it is appropriate. Although appropriate responses cover a wide range of possible responses, the Region reviews the intended State action in the context of the specific case.
- ° This review must also take into account the actions available under State law, as reviewed during the original granting of primacy.
- ° If the Region finds that the State's intended action is inappropriate, the Region should discuss this with the State. If agreement is reached, the State has 30 days to initiate the action.
- ° If no agreement is reached on the specific case after the State is informed of EPA's disagreement, the Region notifies the State in writing that it has 30 days to correct the situation or EPA will take the enforcement action.
- ° In those cases where no agreement has been reached, upper level management should be involved in the negotiations prior to formally notifying the State that EPA plans to take action unless the situation is corrected.
- ° EPA will take action only on those cases identified as a priority with the State and as a significant violation and which has been formally referred and tracked.



## HISTORY OF INADEQUATE ACTION

### Cases Not Identified as Formal Referrals

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- ° The Region should discuss such cases during State midyear and end of the year evaluations.
- ° In situations where there appears to be a significant problem in a particular area, the Region should attempt to resolve this problem through a number of mechanisms. These mechanisms include: addressing the problem through specific reference in the next year's grant narrative, providing additional training if appropriate, and identifying the problem area as a priority area for which formal referrals will be made and tracked.

### Cases Which Are Formal Referrals

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- ° The Region should try to resolve problems as they arise on a case by case basis in the context of consultations prior to the State's enforcement actions. However, when this has failed, and the Region has informally and formally discussed and documented problems and the State has a pattern of inadequate action, the Region needs to correct the situation.
- ° As for cases which are not formal referrals, the Region should work with the State during midyear and end of the year evaluations as well as during negotiations concerning specific cases being tracked.
- ° The Region should address such problems through training, specific grant guidance language, and continued tracking of priority areas.
- ° If the Region has documented a history of inadequate enforcement of the use provisions of the statute and has exhausted all other avenues of resolution, the Region should consider rescission of primacy.
- ° Procedures for the rescission of State primary enforcement responsibility for pesticide use violations are explained in 40 CFR 173.

## RESCISSION OF PRIMACY

### Initiation of Rescission Proceedings

- ° Rescission of primacy requires written notification by the Administrator to the State of those aspects of the State's pesticide use enforcement program which have been found to be inadequate. The CFR delineates the specific information which should be in the notification.

### Informal Conference and Settlement

- ° After receipt of the notification, the State may request an informal conference between the State and EPA officials to discuss the findings.
- ° If the Administrator finds, based on the conference, that the deficiencies did not exist or were corrected by the State, the Administrator shall issue an order withdrawing the notice of intent to rescind.
- ° At any time prior to issuance of a final order, the State and EPA may resolve the issues raised. Any settlement agreement shall be in writing and signed by both parties.
- ° If an agreement is signed, the Administrator shall issue an order withdrawing the notice of intent to rescind.

### Request for Hearing

- ° A State may request a hearing before a Presiding Officer within 60 days of receipt of notice of intent to rescind.

### Publication of the Notice and Hearing

- ° Within 60 days after service of notice, the Administrator shall publish in the Federal Register, the notice of intent to rescind.
- ° At the same time, the Administrator shall schedule a hearing in the State if a hearing has been requested by the State.
- ° Representatives of the State, the public, and EPA may present evidence.

Hearing and Recommended Decision

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- ° Decision may be an order to rescind primacy in whole or in part or to withdraw notice of intent to rescind.
- ° Decision becomes final within 45 days unless an appeal to the Administrator is taken or the Administrator reviews sua sponte.

Final Order

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- ° Final Orders shall be published in the Federal Register.

Judicial Review

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- ° A State may appeal an order rescinding, in whole or in part, its primacy to the appropriate federal court.

OFFICE OF PESTICIDE TOXIC SUBSTANCES

Program Area: Pesticides Enforcement

OBJECTIVE	MEASURE	SPMS CODE	FREQUENCY
Achieve and maintain a high level of compliance (con't).	<ul style="list-style-type: none"> <li>° addressed after exceeding specified time frames (Includes extensions granted to States)</li> </ul> <p><u>Significant Violator</u> (EPA Cases) Dynamic Base*</p> <p>For use violations referred from the states to EPA for action or for use cases based on EPA inspections report:</p> <ul style="list-style-type: none"> <li>° number of actions addressed within 30 days of state rererral or completion of EPA inspection:</li> <li>° number not addressed within specified timeframes.</li> <li>° addressed after exceeding specified timeframes.</li> </ul> <p>*Regional quarterly targets will be set for this measure.</p>	P/E - 4	Q1,2,3,4

OFFICE OF PESTICIDES AND TOXIC SUBSTANCES

Program Area: Pesticides Enforcement

OBJECTIVE	MEASURE	SPMS CODE	FREQUENCY
Achieve and maintain a high level of compliance.	<u>Inspections for Significant Activities</u>  Specify the number of State inspections conducted in the following categories identified on EPA form 5700-33H and the number of EPA inspections in comparable categories: * <ul style="list-style-type: none"> <li>o agricultural use and follow-up</li> <li>o nonagricultural use and follow up</li> <li>o restricted use pesticide dealers</li> </ul>	P/E - 1	Q 1,2,3,4
	<u>Compliance Rates for Significant Activities</u>  Report on number of actionable state inspections for the following categories identified on EPA Form 5700-33H.* <ul style="list-style-type: none"> <li>o agricultural use and follow-up</li> <li>o nonagricultural use and follow-up</li> <li>o restricted use pesticide dealers</li> </ul>	P/E - 2	Q 1,2,3,4
	<u>Significant Violator (State Primacy)-Dynamic Base</u>  For referrals under Section 27 designated as significant in accordance with the procedures set forth in 40 CFR 173 (procedures governing referrals) EPA Regions report: <ul style="list-style-type: none"> <li>o number of referrals <u>addressed</u> within specified timeframes (30 days investigation; 30 days prosecution)(Timeframes should not include extensions granted to States.)</li> <li>o <u>not addressed</u> within specified timeframes</li> </ul> <p>* All Federal data will be reported quarterly in real time. All state data will be reported quarterly, one quarter out of phase.</p>	P/E - 3	Q 1,2,3,4

Revised May 1985



# The Federal Insecticide, Fungicide, and Rodenticide Act as Amended

7 USC 136a-1

P.L. 95-396;  
92 Stat. 836.

## "SEC. 26. STATE PRIMARY ENFORCEMENT RESPONSIBILITY.

"(a) 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; *Provided*, 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.

7 USC 136a

7 USC 136b

"(b) Notwithstanding the provisions of subsection (a) of this section, any State that enters into a cooperative agreement with the Administrator under section 23 of this Act for the enforcement of pesticide use restrictions shall have the primary enforcement responsibility for pesticide use violations. Any State that has a plan approved by the Administrator in accordance with the requirements of section 4 of this Act that the Administrator determines meets the criteria set out in subsection (a) of this section shall have the primary enforcement responsibility for pesticide use violations. The Administrator shall make such determinations with respect to State plans under Section 4 of this Act in effect on September 30, 1978 not later than March 31, 1979.

7 USC 136

7 USC 136f

7 USC 136g

"(c) the Administrator shall have primary enforcement responsibility for those States that do not have primary enforcement responsibility under this Act. Notwithstanding the provisions of section 2(e) (1) of this Act during the period when the Administrator has such enforcement responsibility, section 8(b) of this Act shall apply to the books and records of commercial applicators and to any applicator who holds or applies pesticides, or use dilutions of pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and section 9(a) of this Act shall apply to the establishment or other place where pesticides or devices are held for application by such persons with respect to pesticides or devices held for such application.

7 USC 136a-2

P.L. 95-396;  
92 Stat. 837.

## "SEC. 27. FAILURE BY THE STATE TO ASSURE ENFORCEMENT OF STATE PESTICIDE USE REGULATIONS.

"(a) Upon receipt of any complaint or other information alleging or indicating a significant violation of the pesticide use provisions of this Act, the Administrator shall refer the matter to the appropriate State officials for their investigation of the matter consistent with the requirements of this Act. If, within thirty days, the State has not commenced appropriate enforcement action, the Administrator may act upon the complaint or information to the extent authorized under this Act.

"(b) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out (or cannot carry out due to the lack of adequate legal authority) such responsibility, the Administrator shall notify the State. Such notice shall specify those aspects of the administration of the State program that are determined to be inadequate. The State shall have ninety days after receipt of the notice to correct any deficiencies. If after that time the Administrator determines that the State program remains inadequate, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

7 USC 136a-1

"(c) Neither section 26 of this Act nor this section shall limit the authority of the Administrator to enforce this Act, where the Administrator determines that emergency conditions exist that require immediate action on the part of the Administrator and the State authority is unwilling or unable adequately to respond to the emergency.

## Index

The documents in this index are referenced by the Compendium subject/volume abbreviation and the date of the document. However, FIFRA Compliance Program Policy Compendium documents are referenced by the subject/volume abbreviation and the document number. The abbreviations for the subject/volumes in this index are as follows:

- TG -- Technical Guidance (Volume 1);
- SRG -- State-Related Guidance (Volume 2);
- ES -- Enforcement Strategies (Volume 3);
- ERP -- Enforcement Response Policies (Volume 4); and
- FCPP -- FIFRA Compliance Program Policy Compendium (Volume 5)

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