
FIFRA PROJECT OFFICERS MANUAL

STATE/TRIBAL - EPA COOPERATIVE
PROGRAM MANAGEMENT

U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance,
Office of Compliance
Monitoring, Assistance, and Media Programs Division
Pesticides, Wastes and Toxics Branch

And

U.S. Environmental Protection Agency
Office of Chemical Safety and Pollution Prevention
Office of Pesticide Programs
Field and External Affairs Division
Government and International Services Branch

July 2017

FOREWORD

The purpose of this FIFRA Project Officers Manual is to provide guidance to new as well as experienced project officers in the management of grants and cooperative agreements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Project officers are encouraged to supplement this manual with the appropriate regional guidance as well as any future additions provided by EPA headquarters.

DISCLAIMER

This FIFRA Project Officers Manual has been developed for EPA project officers acting on behalf of EPA and is intended solely for internal management purposes. It does not create any rights, substantive or procedural, enforceable at law. EPA may periodically revise this policy to make improvements and/or to reflect changes in EPA policy. EPA reserves the right to act at variance with this policy. Variances must be explained and documented. Varying from this policy does not disqualify the use of information obtained, for any purpose.

REVISIONS

July 2017 – Revised the FIFRA Project Officers Manual, issued September 17, 2002.

FIFRA PROJECT OFFICERS MANUAL

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CHAPTER ONE

INTRODUCTION

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PURPOSE

The U.S. Environmental Protection Agency's (EPA's) Office of Pesticide Programs (OPP) and Office of Enforcement and Compliance Assurance (OECA) work together to develop and manage a comprehensive National Pesticide Program which is implemented through cooperative agreements with states and tribes. Note that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 2 defines a "state" to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa (often referred to as "territories").

The purpose of this Project Officers Manual (Manual) is to delineate regional responsibilities in the management of pesticide cooperative agreements. In most regional offices, the responsibilities described in this Manual are performed directly by a project officer, and these duties are referred to consistently in the Manual as project officer responsibilities, duties, functions, activities, etc. However, in some regional offices, a portion of these responsibilities may be performed by technical contacts, program specialists or inspectors. In those regions, the project officer must coordinate with everyone associated with those cooperative agreement responsibilities to ensure adequate implementation and oversight.

This Manual is meant to provide project officers with the tools they need to be successful in administering FIFRA cooperative agreements with states and tribes. While EPA recognizes that there will be differences in regional approaches, use of this Manual will help project officers carry out their responsibilities in a similar manner, promoting national consistency. We encourage project officers to consult with each other often, within and between regions, as they work with the states and tribes. Where appropriate, project officers are encouraged to consult with the Office of General Counsel, especially concerning Indian law and grants matters.

EPA HEADQUARTERS/REGIONAL RELATIONSHIP

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

OECA is responsible, in part, for compliance monitoring and enforcement under FIFRA. To accomplish its goals, OECA works in partnership with the Office of Chemical Safety and Pollution Prevention (OCSPP) (see below), regional offices, states, tribes and territories. OECA is divided into the following eight offices:

- Office of Compliance (OC)
- Office of Civil Enforcement (OCE)
- Office of Environmental Justice (OEJ)
- Office of Administration and Policy (OAP)
- Federal Facilities Enforcement Office (FFEO)
- Office of Criminal Enforcement, Forensics, and Training (OCEFT)
- Office of Federal Activities (OFA)

- Office of Site Remediation Enforcement (OSRE)

OC and OCE develop national compliance monitoring and enforcement policies, priorities, and strategies for FIFRA.

OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION

OCSPP is responsible for implementing FIFRA program policies. To accomplish its goals, OCSPP works in partnership with OECA, regional offices, states, tribes and territories. OCSPP is divided into the following three offices:

- Office of Pesticide Programs (OPP)
- Office of Pollution Prevention and Toxics (OPPT)
- Office of Science Coordination and Policy (OSCP)

OPP has the lead in the development of national policies, rules, and regulations that control the registration, use, sale, and distribution of pesticides. Program initiatives such as pesticides in water, worker safety, pollinator protection and endangered species protection are also developed by OPP.

Consistent with regional policies, the project officer may need to communicate regularly with OPP and OC for advice and recommendations in the management of state cooperative agreements and to provide feedback on the implementation/administration of the national program.

OVERVIEW OF PROJECT OFFICER ROLES AND RESPONSIBILITIES

Project officers should be knowledgeable about the pesticide programs in their assigned states or areas of Indian country. This includes understanding the federal government's unique relationship with tribal governments and the federal trust responsibility, discussed more fully in Chapter 8. Project officers have to balance the many priorities of headquarters, regions, states, and tribes throughout the year. Through continuing negotiations of the pesticide cooperative agreements, the project officer strives to balance the needs of the grantees with the objectives of the regional and national pesticide programs.

Project officers have three key roles: 1) management and oversight; 2) information conduit and liaison; and 3) fostering success for both the grantee and EPA. There are specific responsibilities with each role.

MANAGEMENT AND OVERSIGHT ROLE

Under the management and oversight role, project officers have cooperative agreement, fiduciary and primacy responsibilities.

COOPERATIVE AGREEMENT RESPONSIBILITIES

Project officers must manage all aspects of negotiating, administering and overseeing cooperative agreements. This responsibility includes:

- Negotiate cooperative agreements with grantees.
- Review workplans to make sure commitments are appropriate and realistic.
- Track grantee activities throughout the year to make sure commitments are being met.
- Conduct formal evaluations as directed by the FIFRA Cooperative Agreement Guidance and Chapter 10 of this Manual. At the time of the review, there should be no surprises for the grantee or project officer if the project officer has been successful.
- Conduct informal evaluations throughout the year and provide constructive feedback to grantees.
- Meet all reporting obligations, including the end-of-year report.
- Renegotiate grantee workplans, as necessary.
- Maintain complete and accurate files and agreements.
- Meet all project officer training requirements and keep credentials current.

FIDUCIARY RESPONSIBILITIES

Fiduciary responsibilities include:

- Review cooperative agreement budgets annually to make sure proposed expenditures are reasonable.
- Track drawdowns to ensure work is occurring in a timely manner.
- Track type of spending to make sure it is eligible, allowable, allocable, reasonable and necessary.

Project officers will need to be knowledgeable about the size, capacity and complexity of the grantee's pesticide programs in order to assess whether or not proposed expenses are reasonable.

PRIMACY RESPONSIBILITIES

Project officers need to maintain a basic understanding of pesticide activities outside of the scope of the cooperative agreement to assess if the basic requirements for primacy are being met.

Monitor state programs to make sure adequate laws and regulations are in place, and that the grantee has adequate procedures. This can be done by reviewing inspection files, responses to violations, and conducting laboratory oversight. See Chapter 3 on Primacy.

CONDUIT AND LIAISON ROLE

One of the key responsibilities of a project officer is to serve as an information conduit and liaison. This responsibility includes:

- Maintain a working knowledge of national and regional pesticide program goals, objectives and priorities.
- Maintain a working knowledge of state and tribal programs in the region through frequent communication with grantees.
- Keep regional management updated on the status of grantee's programs.
- Communicate grantee views to EPA regional and national offices.
- Represent EPA position once policy or resource decisions are final.

- Act as a liaison between grantee and the public at large.

FOSTERING SUCCESS ROLE

Project officers have the responsibility to help the grantee be successful. Responsibilities include:

- Provide advice and assistance to grantees in the development and management of their pesticide programs.
- Provide or arrange for training to be provided on enforcement, certification and pesticide program areas.
- Call on EPA and other resources to support FIFRA project officer functions (e.g. technical assistance and training).
 - In many instances the project officer may not be the EPA employee providing the advice, assistance, training, or evaluations. For example, in some regions there may be individuals with specialized expertise in particular programs (i.e. worker protection). When needed, the project officer should coordinate the input of these specialists.

CHAPTER TWO

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INTRODUCTION

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. Sections 136 to 136y) was enacted in 1947, and amended numerous times, most recently by the Pesticide Registration Improvement Extension Act of 2012. FIFRA provides EPA with the authority to award, among other things, cooperative agreements to states, territories, and Indian tribes to help fund state or tribal pesticide compliance and enforcement programs as well as certification and training programs. The project officer should have an understanding of FIFRA and its regulations codified in Title 40 Code of Federal Regulations (40 C.F.R.) Parts 150 to 189.

In addition, EPA has issued specific regulations concerning the administration of cooperative agreements to ensure compliance with the Federal Grant and Cooperative Agreement Act (41 U.S.C. Sections 501-509). These regulations are discussed in more detail below.

PROGRAMMATIC AUTHORITY AND GUIDANCE

KEY PROVISIONS OF FIFRA

The following sections of FIFRA and the regulations promulgated under its authority are of special importance to project officers.

Section 20

Section 20 authorizes EPA to enter into grants or contracts with states, tribes & territories to conduct research as may be necessary to carry out the purposes of FIFRA.

Section 23

Section 23(a)(1) authorizes EPA to enter into cooperative agreements with states, territories, and Indian tribes (“applicants”) to delegate the authority to cooperate in the enforcement of FIFRA and to train personnel of the states and tribes in implementing cooperative enforcement programs, and to support states and tribes in implementing cooperative enforcement agreements through grants-in-aid¹. Section 23(a)(2) provides for the assistance to states in developing state programs, and, to tribes, assistance for certification and training programs. Section 23(b) provides authority for EPA to enter into contracts for

¹ Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and the Independent Agencies Appropriations Act for fiscal year (FY) 1999, Public Law 105-276, pesticide program implementation grants under Section 23(a)(1) of FIFRA are available for “pesticide program development and implementation, including enforcement and compliance activities.” The federal share of funding is limited to 50 percent for the certification and training programs. Training programs are generally implemented by the National Institute of Food and Agriculture, an Agency within USDA which replaced Cooperative State Research, Education, and Extension Service (CSREES). No limitation is specified for enforcement or pesticide programs. EPA usually sets the federal share for the latter programs at a maximum of 85 percent. Contracts with federal, state, or Indian tribal agencies for encouraging applicator training also are authorized.

training and Section 23(c) authorizes EPA to cooperate with USDA's cooperative extension service for the training of applicators.

OTHER IMPORTANT SECTIONS OF FIFRA

Section 2 — Provides general definitions under FIFRA.

Section 8 — Authorizes designated inspectors to have access to and to copy all records showing delivery, movement, or holding of pesticides or devices and all other records and information relating to such delivery, movement, or holding of pesticides or devices.

Section 9 — Authorizes designated inspectors to enter establishments or other places at reasonable times to conduct inspections and obtain samples of pesticides, devices, or their containers or labeling. This section also describes the legal requirements for conducting such inspections.

Section 10 --- Describes how the EPA will handle trade secrets and other confidential business information and provides limitations as to who may have access to such information.

Section 11 — Section 11(a)(2) establishes the requirements for certification plans/programs, and authorizes EPA to approve state plans for certification of applicators that meet EPA's standards. States and tribes are required to maintain their EPA-approved plan/program and submit annual reports to EPA whether or not they have a cooperative agreement in place.

Section 12 — Describes activities which are unlawful under FIFRA.

Section 13 — Describes standards for stop sale, use, or removal orders as well as provides for seizure of products in violation of FIFRA.

Section 18 — Allows EPA to exempt federal and state agencies from any provision under FIFRA if an emergency condition exists.

Section 24 — Describes authority of states under FIFRA. Section 24(a) authorizes states to regulate the sale or use of any federally registered pesticide or device with certain limitations. Section 24(c) authorizes states to issue Special Local Needs registrations.

Section 26 — Sections 26(a) and (b) stipulate under what conditions states shall have primary enforcement responsibility for pesticide use violations (primacy). Section 26(c) describes the circumstances under which EPA has primary enforcement responsibility and how the inspection and information gathering authorities in Sections 8 and 9 would apply to those situations.

Section 27 — Describes requirements for EPA to refer complaints and other information concerning pesticide misuse to states. It also provides the authority for the EPA Administrator to rescind state primacy in certain situations and directly enforce use violations under emergency conditions, even where state primacy exists.

Section 30 — Authorizes states to establish minimum requirements for training of maintenance applicators and service technicians.

REGULATIONS

The project officer should have a current copy of 40 C.F.R. 150 through 189 for reference and possess a general knowledge of its contents. Special attention should be paid to the following parts:

40 C.F.R. Part 171 — Describes the general standards for certifying pesticide applicators. Each state with a state plan for certification of commercial and private applicators of restricted use pesticides must have its plan approved by EPA under 40 C.F.R. 171.7. The project officer must ensure that the plan is updated on a regular basis. The regulations at 40 C.F.R. 171.10 apply to tribes.

40 C.F.R. Part 173 — Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations conducted under FIFRA Section 27(b). An interpretive rule has been published, which defines “State Primary Enforcement Responsibilities”, see Chapter 3. Specifically, the rule addresses the following issues:

- The procedures EPA will follow when referring allegations of pesticide use violations to the states and tracking state responses to those referrals.
- The meaning of “appropriate enforcement action”.
- Clarification of when a state will be deemed to have adopted adequate pesticide use laws and regulations and implemented adequate procedures for the enforcement of such laws and regulations.
- The criteria the Administrator will use to determine whether a state is adequately carrying out its primary enforcement responsibility of pesticide use violations.
- The factors which constitute an emergency situation and the circumstances which require EPA to defer to a state for a response to the crisis.

OTHER PROGRAMMATIC GUIDANCE

EPA provides specific guidance for the administration and oversight of grantee pesticide cooperative agreements. The FIFRA Cooperative Agreement Guidance is jointly issued by OPP and OECA and describes aspects of the National Pesticide Program, including requirements for grantee pesticide programs, and is revised and issued on a regular basis.

EPA also issues National Program Managers (NPM) Guidance documents on a biannual basis. Although coordinated, these guidance documents are issued separately by OPP and OECA and address national priority activities identified by each office for their respective program areas. These documents are also discussed in Chapter 4.

GRANT ADMINISTRATION

Headquarters and regional grants administration personnel must keep abreast of applicable federal regulations, Office of Management and Budget (OMB) circulars, executive orders (EOs), and other

directives affecting EPA awards. See Chapters 6 and 7. Chapter 7 of this manual refers to an EPA application kit which includes some of those documents. The project officer is usually the first point of contact for states and tribes and, therefore, must be familiar with grant procedures and requirements.

All project officers are required to complete EPA's general project officer training for grants and cooperative agreements. As part of this training, EPA's general regulations and policies concerning cooperative assistance agreements are covered. Please refer to the online course [Managing Your Financial Assistance Agreements for POs](#) for more details. A standalone version of the course is also available [Managing Your Financial Assistance Agreements for POs Standalone](#).

APPLICABLE REGULATIONS

2 C.F.R. Part 200

Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards includes assistance requirements mandated by statute or OMB which are necessary for effective program management. It explains how to request and manage an EPA project, describes EPA involvement in the process, identifies the recipients' responsibilities, and outlines allowable costs and requirements for audits.

2 C.F.R. Part 1500

Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards includes supplemental information to 2 CFR Part 200, which is only applicable to the EPA's assistance agreements. Most notably, this includes further details on fixed amount awards, standards for financial and program management, procurement standards, quality assurance and disputes.

40 C.F.R. Part 30

Part 30, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations has been superseded by 2 C.F.R. Parts 200 and 1500. However, for grants in which funds were obligated prior to December 26, 2014, if a monetary amendment has not been awarded on or after December 26, 2014, 40 C.F.R. Part 30 still applies to the grant. 40 C.F.R. Part 30 includes assistance requirements mandated by statute or OMB which are necessary for effective program management. It explains how to request and manage an EPA project, describes EPA involvement in the process, and identifies the recipients' responsibilities. Part 30 applies to grantees such as universities and nonprofit organizations.

40 C.F.R. Part 31

Part 31, on Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, has been superseded by 2 C.F.R. Parts 200 and 1500. However, for grants in which funds were obligated prior to December 26, 2014, if a monetary amendment has not been awarded on or after December 26, 2014, 40 C.F.R. Part 31 still applies to the grant. 40 C.F.R. Part 31 establishes consistency and uniformity among federal agencies in the administration of grants and cooperative agreements to state, local, and Indian tribal governments.

40 C.F.R. Part 35

Part 35, on State and Local Assistance, contains uniform administrative requirements for EPA programs providing financial assistance to state, local, and tribal agencies for continuing environmental activities. It also contains assistance provisions unique to the pesticide programs. Subpart B of this rule

supplements the requirements in several EPA regulations governing grants to tribes and intertribal consortia in a tribal-specific subpart that contains the provisions for environmental program grants that only apply to tribes. It also addresses the Performance Partnership Grant (PPG) program for tribes.

OTHER GENERAL GRANT REGULATIONS AND POLICY

40 C.F.R. Part 7

Nondiscrimination in Programs Receiving Federal Assistance from the Environmental Protection Agency, implements statutes which prohibit discrimination on the grounds of race, color, national origin, sex, or handicap.

40 C.F.R. Part 34

New Restrictions on Lobbying requires that all federal recipients of cooperative assistance funds not use those funds to lobby any member of the federal government and further certify as to its compliance with the regulation.

OMB Circular A-87

Cost Principles for State and Local Governments has been superseded by [2 C.F.R. Part 200 Subpart E](#). However, for grants in which funds were obligated prior to December 26, 2014, if a monetary amendment has not been awarded on or after December 26, 2014, OMB Circular A-87 still applies to the grant. OMB Circular A-87 provides principles for determining the allowable costs of programs administered under agreements with the federal government. Discussions about cognizant agencies and indirect costs are of special interest.

EPA Order 1000.25

Requires award recipients to use recycled paper for all reports that are prepared as a part of the assistance agreement and delivered to the Agency. EPA Orders are high-level documents that provide an overview of basic requirements, such as establishing fair competition practices and monitoring grants for performance and environmental results. The Office of Grants and Debarment (OGD) posts [Grant Related Orders](#).

Grants Policy Issuances

The Office of Grants and Debarment's (OGD's) grant-related policies are known as Grants Policy Issuances (GPIs), are generally more detailed than EPA Orders, and may provide implementation and management roles and responsibilities. Link provided to [OGD GPIs](#)

Policy Notices

OGD also issues Policy Notices (PNs) which carry the same weight as policies, but typically have limited focus and/or flexibility and are time sensitive, such as implementation of a directive from EPA's Office of Inspector General (OIG) or Office of Management and Budget (OMB). There will also be cases where a PN will be used to implement a decision made by an EPA workgroup that needs immediate action and has already been vetted. Link provided to [OGD PNs](#)

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PRIMACY

FIFRA Section 26 is the statutory authority that establishes state primary enforcement responsibility for pesticide use violations, also known as *primacy*. This means that, where a state has primacy, that state conducts compliance monitoring and enforcement activity for use violations. Where a state does not have primacy, EPA conducts compliance monitoring and enforcement activity for use violations. Specifically, Section 26 (a) sets forth:

“IN GENERAL. For the purposes of this subchapter, a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State –

- (1) Has adopted adequate pesticide use laws and regulations, except that the Administrator may not require a State to have pesticide use laws that are more stringent than this Act;*
- (2) Has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations; and*
- (3) Will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation.”*

Additionally, Section 26 (b) sets forth:

“SPECIAL RULES. 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 title 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 [11] of this title 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 [11] of this title in effect on [the date of enactment of the Federal Pesticide Act of 1978], not later than six months after that date.”

These statutory provisions mean that a state can be accorded primacy (1) through a determination by the Administrator under FIFRA 26, (2) through entering into a cooperative agreement that includes the enforcement of pesticide use restrictions under FIFRA Section 23 or (3) through a plan to certify pesticide applicators under FIFRA Section 11.

If a state does not have primacy, EPA has primary enforcement responsibility for pesticide use violations. Specifically, FIFRA Section 26(c) sets forth:

“ADMINISTRATOR. – The Administrator shall have primary enforcement responsibility for those States that do not have primary enforcement responsibility under this subchapter. Notwithstanding the provisions of section [2](e)(1) of this title, during any period when the Administrator has such enforcement responsibility, section [8](b) of this title 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 title 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.”

For purposes of primacy, the term "State" is defined in FIFRA Section 2(aa) as follows:

"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."

It should be noted that the term "State", although it includes states and United States territories, does not include tribes. However, pursuant to FIFRA Section 23, tribes may still enter into cooperative agreements with EPA to implement FIFRA in Indian country and for EPA to provide support for tribal pesticide regulatory programs run under tribal code. Tribes are not accorded primary enforcement responsibility for pesticide misuse and EPA retains direct implementation authority.

STATUTORY AUTHORITIES FOR EPA TO ACT WHERE A STATE HAS PRIMACY

FIFRA Section 27 sets forth authorities for EPA to act when there has been a failure by a state with primacy to assure enforcement of state pesticide use regulations. There are three distinct authorities:

REFERRALS CONCERNING "SIGNIFICANT" VIOLATIONS

EPA may receive information concerning a suspected use violation. Where a state has primacy, that information should be referred to the state. However, where the information indicates a *significant* violation, FIFRA authorizes EPA to act upon that information in the absence of a state's prompt response. FIFRA Section 27(a) sets forth that:

"REFERRAL.-Upon receipt of any complaint or other information alleging or indicating a significant violation of the pesticide use provisions of this subchapter, the Administrator shall refer the matter to the appropriate State officials for their investigation of the matter consistent with the requirements of this subchapter. 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 subchapter."

RESCISSION OF STATE PRIMACY

Circumstances may arise requiring EPA to rescind state primacy. FIFRA Section 27(b) sets forth that:

"(b) NOTICE.-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."

Primacy is a continuous relationship between the state and EPA for successful implementation of FIFRA. Regular primacy reviews can be used by the Project Officer to ensure that the state program for enforcing pesticide use violations is adequately administered and the rescission authority under FIFRA Section 27(b) does not need to be exercised.

Should a determination be made requiring the rescission of primacy under FIFRA Section 27(b), 40 C.F.R. Part 173 provides the procedures governing the rescission process. Generally, the regulation provides for the initiation of proceedings through a written Notice of Intent to Rescind issued to the state. The state is given an opportunity to respond in writing to the Notice, meet with EPA to discuss the potential rescission, and to request a hearing. EPA and the state may resolve issues raised in the Notice by executing an Agreement in writing, signed by the Parties. The regulation contains a requirement for EPA to publish a Notice of Intent to Rescind, if the Agency has not issued an order terminating the rescission proceeding within 60 days after serving the Notice, and to hold a hearing, if one was requested. Any Final Order issued by EPA (including a recommended decision issued by the Presiding Officer following hearing which becomes a final order) will be published in the Federal Register. A state can appeal a Final Order to the appropriate federal court pursuant to FIFRA Section 16.

EMERGENCY SITUATIONS

Circumstances may arise in which it is appropriate for EPA to conduct compliance monitoring or enforcement despite the fact that a state has primacy. FIFRA provides this authority so that EPA can take immediate action to abate an emergency situation where the state is unable or unwilling to respond to the crisis. Specifically, FIFRA Section 27(c) sets forth that:

“(c) CONSTRUCTION – Neither Section [26] of this title nor this section shall limit the authority of the Administrator to enforce this subchapter, 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.”

INTERPRETIVE RULE

The EPA published a Final Interpretive Rule in the Federal Register on January 5, 1983, (48 FR 404 – 411) (Appendix 3-1) for state primary enforcement responsibilities under FIFRA. The purpose of the interpretive rule is to provide EPA’s interpretation of several key provisions in FIFRA Sections 26 and 27 and provide operational substance to the criteria used by EPA for primacy related decision-making to ensure that it is consistent throughout the regions. Specifically, the interpretive rule addresses:

- Procedures EPA will follow when referring allegations of pesticide use violations to the state and tracking state responses to these referrals.
- The meaning of “appropriate enforcement action.”
- 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.

- The criteria EPA will use to determine whether a state is adequately carrying out its primary enforcement responsibility for pesticide use violations.
- The factors which constitute an emergency situation and the circumstances which require EPA to defer to the state for a response to the crisis.

PROCEDURES FOR REFERRALS TO STATES WITH PRIMACY

Information indicating a “significant” pesticide use violation must be *formally* referred to states with primacy and tracked by EPA. There is a two-step process to determine if the alleged violations are sufficiently “significant”:

- (1) The EPA regions, in consultation with each state, must identify priority areas for referral. These priority areas will consist of those activities in that state which presents the greatest potential for harm to health or the environment. Selection of the priority areas will be based on “pesticide enforcement program evaluations” conducted by the states and regions. Priority areas will be evaluated and revised as needed on an annual basis based upon the effectiveness of the program in reducing the harm associated with pesticide use.
- (2) Within the chosen priority area, what constitutes allegations of a “significant” violation will be determined on a case-by-case basis. An allegation is NOT considered “significant” if:
 - a. the allegation is of a minor infraction which clearly presents little or no danger to health or the environments OR
 - b. the allegation is “spurious;” for example, allegations from sources which have repeatedly proved unreliable.

Examples of “significant” violations could include, but are not limited to:

- Incidents involving human injury or death.
- Incidents involving direct exposure to humans.
- Incidents involving death to domestic animals (e.g. pets, livestock).
- Incidents involving bee kills or fish kills.
- Incidents involving large-scale crop or property damage.
- Incidents involving contamination of drinking water supplies.
- Incidents involving contamination of recreational water resources.
- Incidents involving potential misuse of a Restricted Use Pesticide.

The State Enforcement Priority Worksheet (see Chapter 9, Exhibit 9-2) may be used by the project officer. Incidents that score 100 points or higher on the worksheet should be formally referred to the states and tracked by EPA. Other incidents that score lower than 100 points should be forwarded to the states for follow-up, if necessary, but are not formally tracked by EPA.

FIFRA Section 27(a) authorizes EPA to act if the state fails to “*commence* appropriate enforcement action” within thirty days of a formal referral of a suspected significant violation. However, EPA recognizes that thirty days may not be enough time to complete an investigation. Therefore, the interpretive rule adopts a flexible approach to the thirty-day time period and breaks the referral process down into two steps:

- (1) Upon formal referral to a state, the state must conduct an adequate investigation, which is defined as one in which the state has (a) followed proper sampling and evidence-gathering techniques, (b) responded expeditiously to the referral so that evidence is preserved to the extent possible, and (c) documented all inculpatory or exculpatory events or information.
- (2) Once the investigation is complete, the state has thirty days to commence the enforcement action, if one is warranted. The thirty-day period may be extended when required by the procedural characteristics of that state's regulatory structure. An "appropriate enforcement response" is interpreted to include 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 the State's Attorney for action or other similar enforcement remedy available under state law.

If EPA determines that the state's intended enforcement response is inappropriate, EPA may bring its own action after notice to the state but no sooner than the thirty days set forth in the statute. A state may determine that it does not have the enforcement response authority deemed appropriate in a particular case and, therefore, may request that EPA act on a violation using remedies available under FIFRA.

THE MEANING OF "APPROPRIATE ENFORCEMENT ACTION"

Whether a state enforcement response is "appropriate" is also addressed by the Interpretive Rule. What is appropriate in any given case can vary because it is fact-dependent. However, the Interpretive Rule recommends using the statutory penalty criteria set forth in FIFRA Section 14(a) (gravity, size of business, history of prior violations), any EPA guidance on assessing penalties under Section 14(a), the category of applicator, and whether the violations were knowing to assess whether the state's intended enforcement response is appropriate.

ADEQUATE LAWS AND PROCEDURES

The Interpretive Rule sets forth that, "a State may obtain primacy in two ways: (1) by demonstrating that the elements of its use enforcement program, or of its approved certification program, satisfy the two main criteria in section 26(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." (48 FR 408; see Attachment 3-1) To be considered "adequate," the state legislation must address:

- (1) Use Restrictions – The state law must prohibit those acts, related to use, which are considered unlawful under FIFRA. States may be granted partial primacy if they regulate less than all the following categories of use violations:
 - a. Use of a registered pesticide in a manner inconsistent with its label (FIFRA Section 12(a)(2)(G));
 - b. Use of a pesticide which is under an experimental use permit contrary to the permit (FIFRA Section 12(a)(2)(H));
 - c. Use of a pesticide in tests on humans in violation of FIFRA (FIFRA Section 12(a)(2)(P));and

- d. Violation of the provision in FIFRA Section 3(d)(1)(c) which requires Restricted Use Pesticides to be applied by or under the direct supervision of a certified applicator.
- (2) Authority to Enter – The state must have the authority to enter private property to conduct inspections and take samples.
- (3) Flexible Remedies – The state must be able to issue Warning Letters or Notices of Noncompliance, pursue administrative or civil actions that results in an adverse economic impact on the violator, and pursue criminal sanctions.

To be considered “adequate,” the state enforcement procedures must address:

- (1) Training – The state, in cooperation with EPA, must train personnel in topics such as violations discovery, obtaining consent, preservation of evidence, sampling procedures, case development, and maintaining case files. Training can be provided through prepared materials or on-the-job training. A continuing education program is crucial.
- (2) Sampling techniques and laboratory capability – The state must show that it is technologically capable of conducting a use enforcement program. This requires access to appropriate equipment and analytical procedures.
- (3) Processing complaints – The state must have an adequate referral system that can process incoming complaints and track the case through each stage of the enforcement process, from investigation through ultimate disposition.
- (4) Compliance monitoring and enforcement program – The state must have program planning that takes into consideration national program priorities as manifested through the grant negotiation process as well as the priorities specific to the individual state. The state must demonstrate that it has sufficient manpower and financial resources available to support the program.
- (5) Education – The state should implement a program to inform their constituencies of applicable pesticide use restrictions and responsibilities.

ADEQUATE IMPLEMENTATION

FIFRA Section 27(b) authorizes EPA to rescind primacy where it determines that a state is not carrying out (or cannot carry out due to the lack of adequate legal authority) such responsibility. This provision creates the continuing responsibility for EPA to monitor a state’s status with regard to primacy. Therefore, in addition to an initial determination that a state qualifies for primacy, there is an ongoing need to conduct primacy reviews to see if the state is adequately carrying out its responsibilities. This ongoing relationship ensures an adequate FIFRA program over time.

The central inquiry will be whether the state’s primacy program assures compliance with pesticide use restrictions through consideration of program deficiencies and successes. There are two parts to this evaluation – first, whether the state has adequate procedures; second, whether the state is implementing its procedures. EPA will evaluate the state’s performance by using the same criteria applied for determining whether the state has adequate laws/regulations and procedures (training, sampling techniques, laboratory capability, etc). The assessment needs to include the impact of any amendments or supplements to the state law and determine whether the criteria for primacy are still satisfied. EPA needs to review the efforts *actually applied* by the state *during the review period* to determine if the state is carrying out its responsibilities. Ask these questions:

- (1) Training – Are any of the difficulties encountered by the state related to a lack of adequate training?
- (2) Sampling techniques and laboratory capabilities – Are the state’s sampling techniques and analytical capabilities hindering its ability to properly investigate and prosecute? Have the state’s laboratory and sampling procedures kept pace with developments in analytical technology?
- (3) Processing complaints – Are misuse complaints received by the state being processed quickly and efficiently?
- (4) Compliance monitoring and enforcement – If reasonable comparisons are possible, are the state’s compliance monitoring activities consistent with similar activities in other states? Does the state have a neutral inspection scheme? Does the state follow its procedures for investigating cases? Has the prosecutorial state authority demonstrated a willingness to pursue cases? Are state compliance monitoring and enforcement resources directed toward state and national priority areas negotiated in the grant workplan?
- (5) Education – Does the state education program encourage voluntary compliance with pesticide use restrictions? Are there procedures in place to facilitate public participation? Is there an indication that violations are due, in part, to a lack of familiarity with the laws?

EMERGENCY RESPONSE AUTHORITY

EPA has the authority under FIFRA Section 26(c) to take immediate action to abate an emergency situation where the state is unable or unwilling to respond to the crisis. The Interpretive Rule defines what constitutes an “emergency” and provides benchmarks to determine if a state is “unable” or “unwilling” to respond. Something is considered an “emergency” if it presents a risk of harm to human health or the environment that is both serious and imminent and requires immediate abatement action. A state is considered “unwilling” to respond if it manifests an unwillingness to respond rapidly or where the state cannot give assurances that it will respond more rapidly than EPA could respond. A state is considered “unable” to respond if it lacks the authority to respond or where it lacks the technology or resources to respond.

PRIMACY REVIEWS VERSUS GRANT REVIEWS

The oversight activities of grant reviews, conducted pursuant to 40 C.F.R. Part 35, and primacy reviews can intersect and often the reviews occur at the same time. However, there are fundamental differences between the two types of reviews and, therefore, the project officer must ensure that the requirements of each type of review have been fulfilled. It is recommended that the project officer conduct the primacy review at Mid-Year or End-of-Year by using the information submitted by the grantee in accordance with its negotiated workplan and any other information gathered through evaluations. A Primacy Resource Chart is provided in Appendix 3-2 to assist the project officer in conducting a Primacy Review. Frequently Asked Questions and Answers are provided in Appendix 3-3.

APPENDIX 3-1 – INTERPRETIVE RULE

404 Federal Register / Vol. 48, No. 3 / Wednesday, January 5, 1983 / Rules and Regulations

**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.

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-2624E, 401 M St., SW., Washington, D.C. 20460, (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. 136w-1 and 136w-2, which together established a standard and procedure for according 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 primacy 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 16799, 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) became law. This bill amended several sections 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 State 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. 136w)). [Note: This rule will not appear in the Code of Federal Regulations.]

I. 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

"(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 two ways: (1) by demonstrating that the elements of its use enforcement program, or of its approved certification program, satisfy the two main criteria in section 26(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)(G)).

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

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 complaint 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 25 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 I.A.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 20 days. After 20 days, the Region learns that the State has not yet begun its investigation. In this case, the Region will begin 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 inappropriate response to this violation.

a. Risk associated with the violative action. Fortunately in this instance, the herbicide 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 labeled "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 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, 1982.

John W. Hernandez, Jr.,
Acting Administrator.

[FR Doc. 83-6 Filed 1-4-83; 8:45 am]
BILLING CODE 6560-50-M

APPENDIX 3-2 – RESOURCE CHART

Resource Chart to Evaluate Primacy (circle an answer, either no or yes)

Primacy Criteria	Criteria Components	Examples of documents that could be reviewed (not exhaustive list)	General questions to ask	Meets criteria	Lacking to completely deficient (*)
					 
A) Adequate Laws and Regulations	1) Use restrictions	State pesticide law(s); unlawful acts section	Have there been any changes to laws that impact/remove the following prohibited acts:		
			Use inconsistent with its labeling?	no	yes
			Use of an Experimental Use Permit contrary to permit?	no	yes
			Use of pesticide in human tests contrary to 12(a)(2)(P)?	no	yes
			Requiring RUPs to be applied only by or under the direct supervision of a certified applicator?	no	yes
	2) Authority to enter	State pesticide law(s); inspection authority; regulations; interpretive guidance	Have there been any changes to laws that impact/remove the state's ability to enter, through consent, warrant or other authority, premises or facilities where pesticide use violations may occur?	no	yes
			Have there been any changes to impact/remove the state's authority to take samples?	no	yes
	3) Flexible remedies	State pesticide law(s); enforcement authority	Have there been any changes to laws/regulations that impact/remove the state's flexibility to issue from the following array of enforcement remedies:		
			Warning letters or notices of noncompliance	no	yes
			Administrative or civil actions (e.g. license or certification suspensions and revocations, civil penalties)	no	yes

			Criminal sanctions	no	yes
B) Adequate Procedures	1) Training	Inspector training program; Inspection files	Are adequate procedures in place, in cooperation with EPA, to train inspectors to discover violations, obtain consent, preserve evidence and collect samples?	yes	no
			Has the state had problems in enforcing pesticide use due to lack of adequate training of state inspectors?	no	yes
			Are procedures in place to train enforcement personnel in case development and maintenance of case files?	yes	no
			Do these procedures involve on-the-job training as well as a continuing education program?	yes	no
	2) Sampling techniques & laboratory capability	Inspection files; sampling SOPs; QAPP	Does the state have access to equipment necessary to perform sampling?	yes	no
			Is the state able to use samples collected to support enforcement actions?	yes	no
			Does the state have access to laboratory analysis for samples?	yes	no
			Does the state have a quality assurance program in place?	yes	no
			Does the state participate in a check sample program?	yes	no
			Are the state's sampling techniques and analytical capabilities helping the state's ability to successfully find and prosecute persons who misuse pesticides?	yes	no
			Have the state's sampling and laboratory procedures kept pace with developments in analytical technology?	yes	no
	3) Processing complaints	State's complaint tracking system	Does the state have a complaint tracking system that contains:		
			a. a method to send complaints to a main organizational unit for review;	yes	no
			b. the ability to track different stages of the complaint;	yes	no

			c. method to refer the complaint for investigation;	yes	no
			d. the status of the complaint or case	yes	no
			e. a procedure for notifying citizens of the disposition of the complaint	yes	no
			Are complaints processed quickly and efficiently?	yes	no
			Do citizens alleging a use violation seek redress from EPA after first directing their complaint to the state?	no	yes
			Is the state responding to Section 27(a) referrals in a timely and appropriate manner?	yes	no
	4) Compliance monitoring and enforcement	Inspection and enforcement case files; enforcement response policy	Do the enforcement actions taken by the state have sufficient correlation to the gravity of the violation?	yes	no
			Is the state's attorney general's office willing to pursue cases referred by the state?	yes	no
			Are state resources being directed towards the more significant enforcement problem areas?	yes	no
			As demands of an adequate program change, are enforcement priorities adjusted?	yes	no
	5) Education	State's applicator outreach program	Is the state's education program encouraging voluntary compliance with pesticide use restrictions?	yes	no

Flag Definitions:

Green  - State meets primacy criteria in FIFRA sections 26 and 27 and the 1983 Final Interpretive Rule

Yellow  - Areas of concern have been identified which could jeopardize the state's primacy status in the future if not resolved

Red  - State primacy criteria in FIFRA sections 26 and 27 are not met; Rescission proceedings should start, per FIFRA section 27(b)

Note (*) - Findings that fall into the "yellow-flag/red-flag" column can represent a range of issues from areas of concern or areas needing improvement that if not addressed could jeopardize the state's primacy status in the future; to issues that require immediate attention that would cause the state to lose primacy, either in part or in whole. The range of EPA responses to any area in the yellow/red column include:

Action Type	Description
No Action	EPA and State agree no action required.
Tier 1- Informal Notification	State is notified of potential areas of inadequacies and provided opportunity to refute or resolve.
Tier 2- Formal Notification	State is notified of inadequacies by way of written communication and provided opportunity to refute or address.
Tier 3- Formal 27(b) Notice	After Administrator determines that a State with primacy is not carrying out such responsibility, EPA shall notify State of inadequate aspects of the program. State has 90 days to correct inadequacies.

Any issue identified in the yellow/red flag area needs to be further documented, addressed and fully explained in the region's evaluation report.

APPENDIX 3-3 – FREQUENTLY ASKED QUESTIONS AND ANSWERS

Question: When does an EPA FIFRA Project Officer/Technical Contact (PO/TC) conduct a review to ensure a FIFRA State Lead Agency (SLA) is maintaining primacy that was accorded under FIFRA Section 26?

Response: Ensuring that a FIFRA SLA maintains primacy is a continuous process that might require the PO/TC to look at different aspects of primacy at various times throughout the year. Generally, a PO/TC does not perform a separate primacy review of the FIFRA SLA. Rather, the primacy reviews are often conducted, and findings documented, as a part of existing cooperative agreement evaluations. If issues arise during other times of the year, those issues may be addressed at that time, then revisited during the year-end review to determine resolution status.

Question: What is the PO/TC reviewing?

Response: The review to ensure that a FIFRA SLA is implementing its pesticide use program in a manner consistent with the terms by which primacy was initially accorded. These reviews provide an opportunity to discuss areas of concern and to ensure there are no issues that may lead to problems with maintaining primacy. The review is generally not as robust/involved a review as the initial review to accord primacy but does address the same elements. PO/TCs should reference the Resource Chart in Appendix 3-2 to see examples of what can be reviewed under the various elements of primacy. The PO/TC can also review state activities that influence these criteria.

Question: What are the measures for determining “adequacy”?

Response: The criteria for assessing whether a state is adequately meeting the requirements for FIFRA are described in FIFRA Sections 26 and 27 and the 1983 Final Interpretive Rule. These criteria are also generally described in the “Resource Chart for POs/TCs to Ensure States are Maintaining Primacy.” While these resources describe the criteria that are to be assessed, there are few hard thresholds that can be applied to determining whether a state is adequately implementing its pesticide use program with the exception of those cases where required elements are totally absent or inadequate. As examples, the following would represent elements which might clearly indicate a program is failing to meet the requirements for primacy:

- A clear loss of full or partial authority regarding pesticide use enforcement;
- Limits in legal authority to allow only issuance of Notices of Noncompliance; or
- The inability to provide sample analyses.

More frequently, a state program will have the required authorities and be conducting work activities in support of implementation and the PO must utilize their professional judgment to assess whether these activities are adequate, present opportunities for improvement, or fall significantly short of fulfilling the obligations associated with primacy. This will require POs to develop an in-depth understanding of the criteria for primacy; all aspects of the state’s rules, regulations, operating procedures and performance in implementation; and a practical understanding of pesticide use, field inspections and enforcement. In those areas where a PO is not the Regional specialist with experience/responsibility or, has not yet developed the necessary expertise, they will utilize other Regional experts to assist, as needed, in the assessment process.

Given the nature of this work and the inherent differences across state programs, it is impossible to remove some level of subjectivity from primacy reviews. However, as described later in this document, an appropriate level of consistency can be maintained across regions through ongoing initial and refresher

PO training and close collaboration and communication between regions, OECA and our state partners. As concerns are identified, it's the POs responsibility to work with the state to assure they have all appropriate facts and, in those areas where they believe a state may potentially be insufficiently implementing the program, to raise the issue to their management for discussion and further dialogue with the state and EPA HQ, as appropriate.

Question: What is the range of responses to areas of concern?

Response: Agency response to areas of concern will vary depending upon the significance of the particular issue. The range of responses and processes for communicating these responses include:

- Tier 1 Responses for Minor Issues of Concern: Responses intended to address infrequent deficiencies which are minor in nature may generally be addressed informally, either verbally or via e-mail, to the state program manager. In either case, a record of the communication should be maintained to document the communication and to provide an historical reference. Examples of minor issues or deficiencies could include: very minor and infrequent errors in inspection reports which, in and of themselves, would not jeopardize a case; infrequent and very minor deviations from established inspection protocols; etc. The frequency and significance of these concerns should be such that they do not indicate an issue of such importance that they raise questions regarding the state's current ability to adequately implement the program. Rather, the feedback represents observations of opportunities for improvement which are offered in the context of continuous improvement. Should the frequency and/or significance of these issues increase, more formal follow-up may be appropriate.
- Tier 2 Responses for Significant Issues of Concern: Tier 2 responses are intended to address concerns stemming from more frequent problems or more consequential deficiencies or deviations which, if left unaddressed, could adversely impact program implementation as it relates to primacy. These issues may represent immediate concerns which must be addressed or issues which should be addressed to prevent more serious shortfalls from developing in the future. Examples may include: more frequent and significant delays in responding to tips and complaints; failure to adhere to inspection protocols in ways which could jeopardize enforcement; a frequency of errors which may indicate a need for additional training; frequent deviation from enforcement response policies in determining enforcement actions; etc.

These concerns may be identified and addressed at any time during the year, but in all cases, must be documented in the end-of-year (EOY) report. Documentation should clearly describe the issue, why it is a concern and include recommended steps for correction or improvement. The issues should be reviewed with state and regional management prior to inclusion in the final EOY report to assure the issue is fully understood and appropriately assessed. Future EOY reports should track steps taken to address or mitigate the concerns until the issues are resolved. Generally, these types of issues do not raise the need to initiate primacy rescission procedures. However, depending upon the nature of the problem, adjustments to a state's grant funding in support of their cooperative agreement could be a consideration.

- Tier 3 Responses for Major Issues of Concern: These responses address serious deficiencies which raise significant concerns regarding program adequacy and which, if not resolved, will certainly jeopardize primacy. These responses require formal communication which may occur

through various mechanisms. The deficiencies and associated recommendations may be identified and addressed at any time during the year, but must also be captured in the EOY report. If sufficiently egregious, EPA concerns and recommendations would take the form of a formal letter from regional management to the appropriate management and/or political levels within the SLA. In all cases, there should be discussions with and between state and regional management and appropriate coordination with OECA prior to issuance of this formal communication.

Examples of deficiencies which may rise to this level of concern could include:

- Changes to state law or regulations which bring into question the SLA's authority to implement the program.
- Reductions in resources such that the state lacks sufficient capacity to meet minimum expectations for implementation.
- Consistent and serious breaches in established policies and protocols, etc.

If a state fails to sufficiently resolve and/or correct these major deficiencies, EPA may proceed with steps to rescind part or all of a state's primacy commensurate with the provisions of FIFRA Section 27 and as described in 40 C.F.R. Part 173. Because these types of problems deal with the essential criteria for primacy and, as such, represent very serious deficiencies for program adequacy, performance under a cooperative agreement would also be compromised, warranting significant adjustments to grant funding during the rescission process.

Question: How do we as EPA maintain consistency in our review and responses?

Response: The Agency is reinvesting in its FIFRA PO training and is committed to continue to provide training opportunities through some vehicle whether it be in-person, webinar, VTC, etc. This training, coupled with improvements to the FIFRA PO Manual, will provide the foundation for understanding the role of a PO and the procedures and criteria for evaluating state performance relative to primacy. Additionally, improved reporting through the FIFRA Template will help assure the collection of consistent information necessary to support consistent reviews.

It is impossible to remove all subjectivity from these reviews and resulting responses. However, continued training and communication and the expected involvement of management in Tier 2 and Tier 3 responses will help assure consistency within and across Regions for critical concerns. The expected coordination with OECA on Tier 3 responses where part or all of primacy may be impacted will assure national consistency on the most significant and impactful responses.

Question: How are your evaluation results presented?

Response: Results from reviews are generally communicated through a project officer's mid- and end-of-year reports. These evaluation results should be presented with sufficient detail to adequately describe the issue identified and why it was of concern, document how the issue was communicated to the state (including the state's response), and describe how the issue was or will be resolved.

It is important to note that these reports may have several different audiences with differing levels of understanding of the programs. Obviously, the most important audience for the report is the SLA and its various levels of management. It's important to note that these reports are public information and may be requested by parties outside of either EPA or the state, as well as various government oversight entities (i.e. GAO, OIG, etc.). Therefore, it is important that the reports, to the extent practicable, provide these various audiences a sufficient sense of the breadth of the review and the findings to have confidence that the review was both thorough and fair. This is important from the perspective of transparency and will ultimately help assure these various audiences have confidence that these programs are being adequately

implemented.

As described in earlier discussions, findings of serious deficiencies may also be communicated formally via a letter or other correspondence from the Region to SLA management or political leadership.

Question: How is rescission handled?

The rescission of state primacy, whether in part or in whole, is a serious step. Prior to taking this step there should have been significant levels of communication with the SLA at various levels. This communication is necessary to assure we understand the state's perspective and possess all relevant information, and to assure we have clearly articulated our concerns and recommendations. If the Agency concludes that the deficiencies are sufficiently egregious and the state has failed to demonstrate progress in taking the required corrective actions, EPA may initiate the formal rescission process as provided in Section 27 of FIFRA.

Specifically, the Administrator will provide notice to the state of those specific aspects of the administration of the state program that have been determined to be inadequate. The state will then 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.

CHAPTER FOUR

GUIDANCE DOCUMENTS

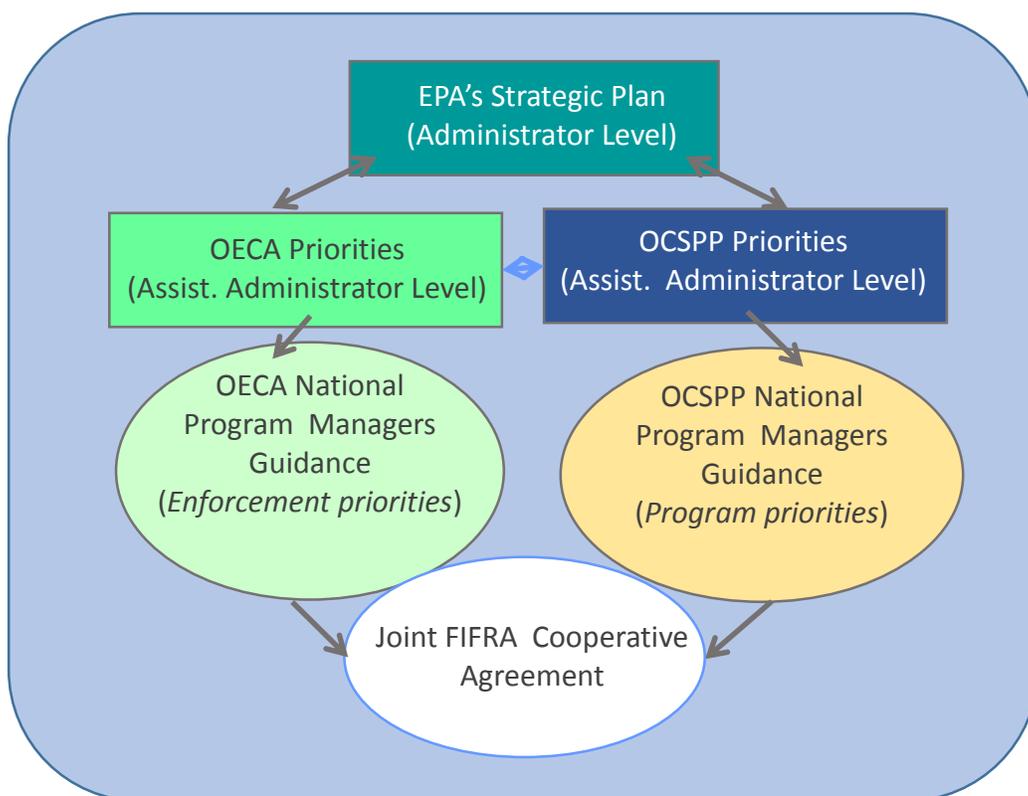
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INTRODUCTION

The National Pesticide Program is shaped by key EPA documents. As shown below in Figure 1, EPA first establishes its strategic plan and then asks each national program office within the EPA to develop national guidance documents for their area of responsibility. These national guidance documents are then used to further define the work of the pesticide program.

Figure 1, US EPA Priority Setting Flowchart



FIFRA COOPERATIVE AGREEMENT GUIDANCE

The Office of Enforcement and Compliance Assurance (OECA) and the Office of Pesticide Programs (OPP) jointly issue a guidance document that provides national direction for administering and overseeing pesticide program cooperative agreements. It provides direction on the goals and priorities of these agreements. Specifically, the purpose of the FIFRA Cooperative Agreement Guidance is to (1) identify levels of attainment for pesticide programs and enforcement, (2) identify activities eligible for cooperative agreement funds in the named fiscal years, and (3) describe requirements and expectations. This guidance is directed to the EPA regional offices who negotiate cooperative agreements to conduct pesticide program implementation activities and compliance/enforcement activities.

OCSPP AND OECA NATIONAL PROGRAM GUIDANCES

Every two years, each EPA national program publishes a National Program Manager (NPM) Guidance on how their portion of the Agency's priorities and programs should be implemented. These guidance documents then shape regional, state and tribal work across the country. The OCSPP NPM Guidance contains OPP's directive for implementing the program-related activities of the National Pesticide Program, while the OECA NPM Guidance provides guidance on pesticide compliance monitoring and enforcement priorities. These documents work together to provide direction for all aspects of the National Pesticide Program. EPA Regions use these two NPM Guidance documents to prioritize their regional work, in concert with the FIFRA Cooperative Agreement Guidance, when negotiating cooperative agreements.

ADDITIONAL GUIDANCES

Project officers may need to consult other guidance documents when negotiating, administering and overseeing cooperative agreements. Additional EPA guidance documents should be referred to as needed. Additional resources include, but are not limited to:

- FIFRA Compliance Monitoring Strategy (May 2015).
- Interpretive Rule (Federal Register Notice January 5, 1983) (see Chapter 3).
- Label Review Manual (current version).
- FIFRA Inspection Manual (current version).
- Worker Protection Standard Inspection Manual (current version).
- Policy on Administration of Environmental Programs on Indian Reservations (November 1984).
- Policy on Consultation and Coordination with Indian Tribes (May 2011).
- Guidance on Basic Elements of an EPA- Funded Tribal Pesticides Program (March 2002).
- Guidance on Granting Federal Credentials to State and Tribal Employees (September 2004).
- Quality Management Plan (QMP) and Quality Assurance Project Plan (QAPP) - [QMP and](#)

[QAPP Guidance.](#)

In addition, there may be regional policies and standard operating procedures that need to be followed. Any region-specific guidance documents are intended to supplement and complement national guidance, not replace it.

Project officers will also need to follow grant management policies that are issued by EPA's Office of Grants and Disbarment (OGD) and administered by the regional grants offices. These policies are often referenced in the FIFRA Cooperative Agreement Guidance. See Chapters 2, 6 and 7.

CHAPTER FIVE

PROJECT OFFICER TRAINING

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INTRODUCTION

FIFRA project officers must have particular knowledge and skills to oversee and manage cooperative agreements. Training can be obtained through a number of EPA training programs and specific on-the-job training opportunities offered by EPA and the states. It is the goal of this chapter to identify training opportunities that will provide the individual with the knowledge and skills that are needed to be a project officer.

PROJECT OFFICER TRAINING

Project Officer Training includes:

- EPA's required general project officer training for grants and cooperative agreements. As part of this training, EPA's general regulations and policies concerning cooperative assistance agreements are covered. Please refer to the online course [Managing Your Financial Assistance Agreements for POs](#) for more details. Another version of the course is also available [Managing Your Assistance Agreements for POs\(2\)](#).
 - Project officers must be recertified in a "one-day refresher" course designed to provide continued training in the proper stewardship of federal assistance activities. Recertification is required every three years.
- Orientation to Quality Assurance Management, Data Quality Objective Workshop, Quality Assurance Project Plan/Quality Management Seminar, and Quality Assurance Refresher Course.
- Thorough study and review of: this Manual; FIFRA and applicable implementing regulations (40 C.F.R. Parts 30 through 47 and 150 through 189); FIFRA State Primary Enforcement Responsibilities, Final Interpretive Rule; new program guidance; and the FIFRA Cooperative Agreement Guidance for the specific fiscal year or multiple years
- Attendance and participation in the FIFRA Project Officer Training program, as available.
- Attendance and participation in FIFRA Project Officer meetings, as available.

SUPPLEMENTAL PROJECT OFFICER TRAINING

Additional training which could benefit project officers, and may be available through the regional offices, include:

- On-the-job training with other more experienced project officers and compliance officers.
- Personal protection and safety, including training in basic first aid, CPR, and defensive driving, and a respirator fitness test.
- Attendance and participation in any inspector workshops or other training opportunities provided by regions and states.

- Oral and written communication skills training.
- Cultural awareness training.
- Working Effectively with Tribal Governments Training.
- Environmental justice training.

INSPECTOR TRAINING

It is recommended that project officers meet the inspector training *curriculum* requirements of Agency Order 3500.1. This order establishes the basic framework for training and development of Agency personnel who conduct compliance inspections and field investigations. The project officer should have full and complete knowledge of the various inspection types (use, misuse, producer establishment, marketplace, container/containerment, WPS, etc.) and investigative activities and become familiar with criminal investigations and procedures. Any project officer leading an investigation or participating in a joint inspection with the state or tribe as an inspector would be *required* to have met requirements of the order and have federal inspector credentials. A project officer may take the lead when training a new state or tribal inspector or when the state or tribe requests that EPA take the lead and serve as an inspector. Project officers who *only accompany* state or tribal inspectors on investigations and inspections are not subject to the order but are still encouraged to fulfill the requirements of the order. The project officer should check with the Region's health and safety training requirements or the health and safety procedures for field activities. Certain tasks will necessitate the initial 24-hour field training requirement, the annual refresher training requirement, or medical monitoring.

REGIONAL PESTICIDE KNOWLEDGE

The project officer should become knowledgeable about pesticide manufacturing, distribution, and use in his/her state(s) and/or areas of Indian country and all aspects of federal and state or tribal pesticide programs. This includes knowledge of crops, pests, important pesticides, agricultural practices, institutional infrastructure, worker protection program requirements, water requirements, endangered species requirements, pollinator protection, state and federal registration programs, and enforcement activities. Project officers should work with their regional managers to identify ways to gain this knowledge.

APPLICATOR TRAINING

A valuable source of training is the state's or tribe's pesticide applicator certification and training program. Project officers are encouraged to obtain copies of the training materials, study them, and take all of the category examinations. Project officers should attend the certified applicator training programs provided by their state or tribe. This training will also familiarize project officers with the state's or tribe's training process and prepare the project officers for evaluating the state or tribe's certified applicator program. University or grower association field days, workshops and meetings also offer viable training opportunities.

GENERAL KNOWLEDGE

EPA Regions may consider training to further project officer development such as the OECA/OCE Division Case Development Training; the Pesticide Inspector Regulatory Training (PIRT) course; and the Pesticide Regulatory Education Program (PREP) course; classes at colleges and universities related to law enforcement, agricultural practices, and integrated pest management. It is helpful to have a general understanding of other EPA regional programs - Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA), Clean Air Act (CAA), Toxic Substances Control Act (TSCA) and Lautenberg Act amendments, Emergency Planning and Community Right to Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

CHAPTER SIX

GRANTS ADMINISTRATION

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INTRODUCTION

The project officer is not the only EPA official overseeing cooperative agreements. Each EPA region has a Grants Management Office which is responsible for the award and oversight of grants and cooperative agreements from an administrative perspective. This chapter describes the roles and responsibilities of the Grants Management Office personnel in relation to the solicitation and administration of FIFRA cooperative agreements.

GRANTS MANAGEMENT OFFICE

Grants Management Offices may be set up differently across EPA regions. However, there are a few things all Grants Management Offices have in common. Each one has a grants management officer, who is responsible for the administrative management of FIFRA cooperative agreements. The acronym “GMO” may be used to refer to either the Grants Management Office or the Grants Management Officer.

Each grants management officer is responsible for managing several grants specialists (GSs). GSs are responsible for reviewing cooperative agreement applications to ensure that applicants have provided the required documents, the information is accurate, the budget adds up, costs are in accordance with federal regulations and EPA policy, and that all approved costs are allowable. In addition, GSs are responsible for reviewing supporting documentation provided by the project officer, to ensure that information is accurate and the cooperative agreement can be awarded. GSs are also responsible for creating the cooperative agreement award document, and ensuring that identified issues are resolved prior to submitting the award document to the award official for signature. In some regions, the award official may be the grants management officer, and in other regions, the award official may be a senior resource official.

INTERACTING WITH THE GRANTS MANAGEMENT OFFICE

GSs work closely with the FIFRA project officer and are responsible for all business and administrative aspects associated with the review, award, and administration of grants. The project officer serves as a liaison between the Grants Management Office and the grantee, though in some cases the Grants Management Office may work with cooperative agreement grantees directly.

Although generally not an expert in the administration and financial requirements of the assistance process, the project officer must be able to identify situations that require in-house coordination and support from the Grants Management Office. The project officer is the primary regional point of contact in the administration of the technical aspects of pesticide cooperative agreements and, often, will broker questions the GSs have with the grantee. It should be noted that, in some instances, the GS will communicate directly with grantee administrative staff outside the FIFRA program (i.e., fiscal office, grants office, etc.) to resolve administrative issues, questions or concerns.

Project officers should develop a close working relationship with their GS. They must rely on the GS to

convey regulatory requirements and must provide the GS with information and opinions regarding funding requests and other program needs. Project officers should see their GS as a resource, and refer non-technical questions about grants to their GS, to ensure adherence to federal regulations and EPA policy.

FINDING GRANT INFORMATION ONLINE

Application information, including necessary forms and instructions, can be found at the following sites:

- <http://www.grants.gov/>

Grants.gov is the website that applicants **must** use for submitting applications. Grants.gov has instructions as well as the required application forms.

- <https://www.epa.gov/grants>

This is EPA's main grants resource webpage for the public. From here, applicants can find instructions on how to apply for grants, application forms, and other helpful information.

- <https://www.cfda.gov/>

This link is to the Catalog of Federal Domestic Assistance (CFDA) Programs, which provides specific information about each grant program. It does not provide application materials, but does provide specific information about each program. The CFDA number for consolidated pesticide enforcement cooperative agreements is 66.700. Other FIFRA related CFDA numbers are 66.605, for performance partnership grants, and 66.716, for research, development, monitoring, public education, outreach, training demonstrations and studies.

TYPICAL APPLICATION KIT CONTENTS

In addition to [EPA's grants website](#), "application kits" may be available from the regional Grants Management Offices. Listed below are the forms and instructions normally included in a grant application kit:

- General instructions.
- Standard Form (SF)-424: Application for Federal Assistance.
- SF-424A: Budget Information for Non-Construction Programs.
- Detailed Budget/Budget Narrative.
- Work Plan/Program Narrative.
- Key Contacts List.
- SF-424B: Assurances for Non-Construction Programs.
- Application Certifications:
 - SF-LLL: Disclosure of Lobbying Activities (Tribes are exempt from submitting this form)
 - EPA 6600-06: Certification Regarding Lobbying (Tribes are exempt from submitting this form)
 - EPA 4700-4: Pre-Award Compliance Review Report

Applicants may be required to submit program-specific forms, such as Quality Assurance Plans. The project officer or other regional program staff typically distributes the program-specific guidance for

pesticide grants and cooperative agreements.

FEDERAL REGULATIONS AND COST PRINCIPLES

While the focus of the project officer is from a technical or 'programmatic' perspective, GSs focus on the administrative aspects of the cooperative agreement. GSs mainly use two titles of the Code of Federal Regulations (CFR) to help them administer grants. Title 2 (cited as 2 CFR) covers Grants and Agreements. Title 40 (cited as 40 CFR) covers Protection of the Environment. Together, they include the regulations that cover grants and cooperative agreements for the protection of the environment.

GSs ensure that the following Federal Regulations and [Cost Principles](#) are followed:

- **2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards:** These Federal Regulations are applicable to all Federal assistance agreements (including cooperative agreements). They cover application requirements, as well as other administrative requirements that are applicable before and after assistance agreements are awarded, through closing out the assistance agreement. In addition, the Cost Principles (in Subpart E) provide Grant Specialists with information to help them determine if specific types of costs are allowable. For example, if a Grant Specialist sees that entertainment costs or advertising costs are included in an application, the Grant Specialist would consult the Cost Principles for help determining if those costs are allowable.
- **2 C.F.R. Part 1500:** These Federal Regulations supplement 2 C.F.R. Part 200, and are specific to all EPA awards. They provide additional information about topics that may not be fully captured, for EPA's purposes, in 2 C.F.R. Part 200. For example, this section provides additional detailed information about EPA's procurement, program income, and disputes procedures.
- **40 C.F.R. Part 35:** These Federal Regulations supplement 2 C.F.R. Parts 200 and 1500 and codify policies and procedures for financial assistance awarded by EPA to State, interstate, and local agencies, Indian Tribes and Intertribal Consortia for pollution abatement and control programs. Subpart A applies to Continuing Environmental Programs (CEPs) for State and Local recipients, and Subpart B applies to CEPs for Tribes. They provide information about specific FIFRA programs, including the purpose, eligibility, any cost share requirements, and other program-specific information. Subparts A and B also provide information on PPGs.

CHAPTER SEVEN

PREPARING A GRANT OR COOPERATIVE AGREEMENT

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INTRODUCTION

Cooperative agreements and grants arise for a variety of reasons. Commonly, they result from the need to expand a pesticide program or to develop and implement a new one. Negotiations may be initiated by EPA or the grantee. The project officer will need to determine if the grantee has the authority to receive the funds, the type of grant sought, the fiscal year period, and the anticipated environmental benefits. These issues are addressed more fully below.

AUTHORITY TO RECEIVE AWARD

STATES

The state must have written authority to enter into cooperative agreements with the federal government. If the cooperative agreement is for the certification of pesticide applicators, the Governor must designate a state lead agency responsible for developing and implementing a state plan for certifying applicators.

TRIBES

All federally recognized Indian tribes (tribes) are eligible to receive grants and cooperative agreements under FIFRA. Any intertribal consortia, as defined in 40 C.F.R. Section 35.502, also may apply. For more information on the eligibility of tribes, see Chapter 8.

SCOPE OF WORK FUNDED BY FIFRA AWARDS

Funding originates from two separate headquarters offices - the Office of Pesticide Programs (OPP) and the Office of Enforcement and Compliance Assurance (OECA). OPP and OECA provide funding, earmarked for cooperative agreements, to the EPA regional offices who provide funding to states and tribes upon entering into cooperative agreements that include eligible pesticide tasks.

OECA provides State/Tribal Assistant Grant (STAG) funds to support pesticide compliance monitoring and enforcement of regulatory programs. Examples of eligible (fundable) enforcement activities include, but are not limited to, developing and adopting pesticide codes and ordinances; providing compliance assistance; developing and implementing tribal policies or plans that “control” pesticide activities in Indian country; implementing best management practices that result in reduced use of pesticides; conducting pesticide inspections; and taking enforcement action or other remedy against violators.

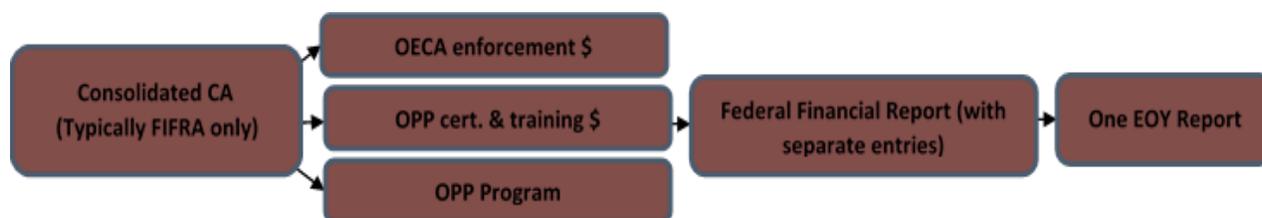
OPP provides STAG funds to support pesticide programmatic activities. Examples of eligible (fundable) program activities include, but are not limited to, providing outreach, communication and training to the regulated community (i.e., agricultural workers, pesticide applicators) and others, as appropriate; developing a plan to protect workers from exposure to pesticides; determining risk to groundwater and surface water from pesticides; developing and implementing methods to protect water resources from pesticides; determining any potential risks to endangered or threatened species from pesticides; and developing and implementing methods to protect these species from pesticides.

TYPES OF GRANTS AND COOPERATIVE AGREEMENTS

There are several different types of cooperative agreements that can be used when structuring a grant with a state or tribe. Most grants and cooperative agreements awarded under FIFRA are either for programmatic or enforcement activities. Although these grants may be separate agreements, they are often consolidated cooperative agreements or Performance Partnership Grants (PPGs). The types of agreements that states and tribes can apply for is described below.

CONSOLIDATED COOPERATIVE AGREEMENTS

FIFRA program grants and cooperative agreements can be awarded together under FIFRA, as one consolidated cooperative agreement. Under a consolidated cooperative agreement, a recipient applies for funding to conduct both enforcement and programmatic activities. While just one cooperative agreement is awarded, grantees must clearly define in their budget, the spending associated with enforcement work versus spending related to program work. The two types of spending activities are then tracked and reported separately in the cooperative agreement. However, the grantee submits just one end-of-year report at the end of the project period.



PESTICIDE SPECIAL PROJECTS

Project officers also may be involved in the management of special projects, for example, endangered species pilot programs, development of disinfectant analytical capabilities, inspector sampling manuals, and container disposal efforts. Related projects may be awarded as separate FIFRA cooperative agreements or under other programs, such as Environmental Justice (EJ) or Community Based Environmental Protection (CBEP) programs or the Pesticide Environmental Stewardship Program (PESP). In general, the grantee must submit a complete application for funding and negotiate an approvable work plan.

PERFORMANCE PARTNERSHIP AGREEMENTS AND GRANTS

Since its implementation in 1995, the National Environmental Performance Partnership System (NEPPS) promotes joint planning and priority-setting by EPA and the states and tribes; provides states and tribes with greater flexibility to direct resources where they are needed most; fosters use of integrated and innovative strategies for solving water, air, and waste problems; achieves a better balance in the use of environmental indicators and traditional activity measures for managing programs; and improves public understanding of environmental conditions and the strategies being used to address them.

EPA developed the Performance Partnership Agreement (PPA) and the Performance Partnership Grant (PPG) for states, and Tribal Environmental Agreements (TEA) and PPGs for tribes. These programs allow states and tribes choices in how to organize their grant work plans in accordance with environmental goals and objectives or in other ways rather than using categories predefined by EPA. However, EPA must be able to link each grant work plan to EPA's Government Performance and Results Act Goal and Objective Architecture.

PERFORMANCE PARTNERSHIP AGREEMENTS

More than half of the states have elected to negotiate and enter into PPAs with EPA as the primary mechanism for implementing NEPPS. Although each PPA is different, PPAs typically establish jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the state and EPA; and the measures to be used in assessing progress. (In some cases, comparable negotiated agreements are given a different name, such as Environmental Performance Agreements.) A PPA generally is based on information about the environmental and program conditions of the state as well as national and regional priorities and concerns. A state may apply for and receive any grant, including a PPG, without negotiating a PPA. However, a PPA can provide the strategic overlay for the work a state plans to carry out with EPA financial assistance, and the PPA can serve as a grant work plan if it meets other grant-related statutory and regulatory requirements.

PERFORMANCE PARTNERSHIP GRANTS

In the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1996); the 1998 Appropriation Act, Pub. L. 105-65, 111 Stat. 1344, 1373 (1997) and the 2016 Consolidated Appropriations Act, Pub. L. 114-113, 129 Stat. 2242, 2554, Congress authorized the award of PPGs in which states, interstate agencies, tribes, or intertribal consortia can choose to combine two or more environmental program grants. A recent grants policy created in partnership between the Office of Grants and Debarment and the Office of Intergovernmental Relations (the National Program Manager for PPGs) clarifies that universities are also eligible for PPGs, if they are instruments of the state. See [Grants Policy Issuance \(GPI\) 15-01: Performance Partnership Grants for States](#) for more information about university eligibility.

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

Where a grantee negotiates both a PPA/TEA and PPG, the processes and documentation can be integrated and, if appropriate, identical. Also, a state or tribe can receive a separate categorical grant for each environmental program, a PPG covering all programs eligible for inclusion, or a combination of separate categorical grants and PPGs covering only some programs.

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

FUNDS AND ACTIVITIES ELIGIBLE FOR INCLUSION IN A PPG

Funds for any particular environmental program grant may be included in a PPG only if the funds for that grant are appropriated in the same specific appropriation as the funds for PPGs, for example, all eligible PPG programs are funded by State/Tribal Assistance Grants (STAG). Also, the program must be specifically identified as eligible for inclusion in a PPG. The most up to date source for determining if a program is PPG-eligible is by checking www.cfda.gov. Currently, funds from all environmental grant programs under FIFRA may be included in a PPG.

A state or interstate agency PPG recipient may use PPG funds to carry out any activity that would be authorized under at least one of the environmental program grants from which funds are combined in the PPG. This means that a PPG recipient may not spend PPG funds on an activity unless the PPG includes some funds from an environmental program grant under which that activity would be eligible. This is known colloquially as “The Dollar In Rule”. A program must contribute at least a dollar, if a state wishes to use PPG funds for that program’s activities.

Unlike the rule governing PPGs to states, 40 C.F.R. Section 35.535 allows tribes and intertribal consortia to use PPG funds for any environmental activity that is eligible under a PPG, regardless of whether a tribe receives funding from that program, provided that the Regional Administrator consults with the appropriate National Program Managers (NPMs). The NPM may expressly waive or modify the consultation requirement in national program guidance.

A state or interstate agency must meet the requirements for the award of each of the environmental programs from which funds are combined in the PPG, with a few specified exceptions. The exceptions are requirements that restrict how a specific environmental program grant can be used after the award. These requirements are not appropriate to be carried over to PPGs because: (1) after funds are awarded in a PPG, they may be used for cross-media purposes and (2) states and interstate agencies do not need to account for the funds in accordance with their original program sources.

EPA will not require tribes and intertribal consortia to provide a PPG cost share for funds from programs that do not require cost shares, such as the Indian Environmental General Assistance Program (GAP). For funds from programs with a cost share requirement of 5 percent or less, the PPG cost share will be the same as the cost share for the individual programs. For funds from programs with a required cost share greater than 5 percent, EPA will require tribes to provide a cost share of 5 percent¹; however, after

¹The authority to award PPGs was granted to EPA by the Omnibus Consolidated Revisions and Appropriations Act of 1996 (Pub. L. 104-134, 110 Stat. 1321). It authorized the Administrator to issue PPGs under independent

the first two years, the Regional Administrator will determine through an objective assessment whether the tribe or the members of an intertribal consortium meet socioeconomic indicators that demonstrate the ability of the tribe or the intertribal consortium to provide a cost share greater than 5 percent. If the Regional Administrator determines that the tribe or members of the intertribal consortium meet such indicators, then the Regional Administrator will increase the required cost share up to a maximum of 10 percent. If the Regional Administrator determines that the tribe or the members of the intertribal consortium do not meet such indicators, then the cost share will remain at 5 percent. Further, the Regional Administrator may waive the required PPG cost share at the request of the tribe or intertribal consortium if the Regional Administrator determines, based on an objective assessment of socioeconomic indicators, that fulfilling the cost share requirement would impose undue hardship on the tribe or members of the intertribal consortium.

ADMINISTRATIVE FLEXIBILITY

A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget, regardless of how many environmental programs provide the funds for the PPG. Once funds are awarded in a PPG, recipients can direct the funds as needed to achieve work plan commitments and need not account for funds in accordance with their original funding program sources. The maximum cost share required for a PPG is the sum of the cost share amounts required for each of the environmental program grants combined in the PPG. If a program has both a match and a maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that program. When funds are combined into a PPG, the cost share does not need to be contributed by the program with the cost share requirement. For example, if a state has a PPG with a program that requires 5 percent match, that match may be contributed by another state program that does not have a cost share requirement. Once funds are combined in a PPG, the source of the cost share funding no longer matters.

PROGRAMMATIC FLEXIBILITY

If approved by the EPA Regional Administrator, a PPG can also provide the state or tribe with programmatic flexibility to increase efforts in some program areas where the state's or tribe's needs are greater and decrease them in others where the state's or tribe's needs are less. When applying for programmatic flexibility, the state or tribal agency must provide a rationale commensurate with the type and amount of flexibility being proposed, explaining the basis for the state's or tribe's priorities and the environmental or other benefits it expects to achieve. The state or tribe must also ensure that basic programs are maintained for all programs combined in the grant.

TRIBAL ENVIRONMENTAL AGREEMENTS AND THE INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM

Tribal Environmental Agreements (TEAs) are similar to PPAs for states. Although each TEA is different, TEAs also typically set out jointly developed goals, objectives, and priorities; the strategies to be used in

regulations notwithstanding any other provision of law. Therefore, if a tribe wishes to include a grant for certification and training activities under FIFRA Section 23, the statutorily required 50 percent match does not apply, as per 40 C.F.R. Section 35.536.

meeting them; the roles and responsibilities of the tribe and EPA; and the measures to be used in assessing progress. A TEA generally is based on information about the environmental and program conditions of the tribe as well as national and regional priorities and concerns. A tribe may apply for and receive any grant, including a PPG, without negotiating a TEA. However, a TEA can provide the strategic overlay for the work a tribe plans to carry out with EPA financial assistance, and the TEA can serve as a grant work plan if it meets other grant-related statutory and regulatory requirements.

The Indian Environmental General Assistance Program (GAP) grants are available to federally recognized tribes and tribal consortia for planning, developing and establishing environmental protection programs in Indian country. Tribes may use GAP funds for activities that develop their pesticide programs, such as assessments that determine pest pressures and pesticide concerns, training staff, and developing plans. GAP funds cannot be used to implement tribal pesticide programs.

All tribes who receive GAP funds are required to write an EPA-Tribal Environmental Plan (ETEP). The purpose of the ETEP is to develop a complete picture of the particular environmental issues facing the tribe, the issues the tribe will be working on and those issues EPA will address consistent with its responsibility to protect human health and the environment. The ETEP may indicate whether pests or pesticides are a concern, and/or could include a list of facilities or sites regulated under FIFRA. The region's GAP project officer for the tribe will have access to the tribe's ETEP and may also be able to provide additional information on any pest or pesticide-related activities, issues or concerns identified by the tribe and whether GAP grant deliverables are submitted in a complete and timely manner.

Project officers should learn from the EPA GAP program whether a tribe has ever used GAP funds, or whether GAP funds may be available, for pesticide program activities. For more information on GAP grants see the [Indian Environmental General Assistance Program Guidance, May 15, 2013](#).

PRE-APPLICATION PREPARATION

Project officers should take an active role in the pre-award phases of a FIFRA assistance agreement to ensure a quality work product. Unlike competitive assistance agreements, during pre-application preparation of FIFRA assistance agreements, the project officer should maintain an ongoing, objective dialogue with the applicant.

In order to apply for an agreement, a state or tribe must already have a pesticide program in place or will need to be in the process of establishing one. The application requires descriptions of plans or existing programs for which the funds will be used. (See Application section below for more details.) The project officer should negotiate all necessary aspects of the cooperative agreement as required by EPA regulations and guidance with the applicant.

The project officer should assist the applicant in the following ways:

Provide all applicable guidance — The project officer or region should transmit the current FIFRA Cooperative Agreement Guidance and all other applicable EPA grant documents to the potential applicant. The FIFRA Cooperative Agreement Guidance is periodically updated; updates should be transmitted to potential applicants in a timely manner upon receipt from OPP and OECA. Other guidance documents may be issued either by the program offices or the Office of Grants and Debarment

(OGD) at any time. The project officer should periodically check the OGD Intranet site (intranet.epa.gov/ogd) and with the program offices for updates. If appropriate, the updates should be sent to grant recipients immediately or they may be included in the next grant cycle.

Provide the application— The project officer or other regional designee shall provide the applicant with the necessary application and guidance or information on how to obtain them. Many of the necessary documents are contained in this manual or are available on the EPA website. In general, applicants should be directed to www.grants.gov for application materials and instructions.

Advise on program development and negotiate workplan— The project officer and the state or tribe should review the current status of the applicant's pesticide program and the various national and regional pesticide priorities before the application is submitted. During this discussion, the relationship these priorities have in regards to state and/or tribal priorities also should be examined. The project officer should discuss any new national program requirements. All project officers are required to negotiate the elements of the workplan with the grantee. The contents of the workplan should be agreed to by both parties before finalizing.

Determine funds available — The project officer may discuss the potential level of funding with the applicant. After reaching an understanding of the applicant's situation, the project officer should advise them on specific steps needed to achieve the greatest benefit with the potential funds available.

Review draft application — The project officer should review the application or parts of it prior to its submission to ensure that it meets all applicable requirements.

APPLICATION

The appropriate application kit should be provided to the prospective grantee (see Chapter 6). The financial assistance application kits are now available electronically at www.grants.gov and grantees must submit their applications using that site.

To assist in the preparation of the grant application, a copy of the current FIFRA Cooperative Agreement Guidance and other appropriate guidance should be provided to the applicant. The project officer should be able to answer questions the applicant may have related to completion of the application forms as well as any other required components of the applicant's submission.

EPA is developing an updated version of the *Integrated Grants Management System*, called the *Next Generation Grants System*. To receive, review, approve, and amend incoming applications for funding, as well as assist with grants management through closeout of each grant.

CONSOLIDATED COOPERATIVE AGREEMENT APPLICATIONS

The applicant should submit a draft work plan and budget to the project officer 90 days before the target date for the grant to start. That allows 30 days for negotiated review, comment, and preparation of a final package for submittal to the EPA regional office. The work plan should address the requirements of the current FIFRA Cooperative Agreement Guidance and any other guidance specific to

the assistance funds.

Each application for cooperative agreement funds must include a proposed budget and a work plan. In order to provide the proposed budget to EPA, the recipient must complete the application forms in the Application Kit assembled by the appropriate Grants Management Office (when available, but also available through www.grants.gov), including all 424-forms and required certifications. If a recipient applies for both enforcement and program development funds, the amount of funding requested from OECA and from OPP must be shown separately on the 424A form. In addition, any match, including in-kind services, also must appear on the 424A form. Match amounts for enforcement activities and for OPP-funded activities must be shown separately. FIFRA Section 23(a) requires a 50% match for certification and training (C&T) programs. For non-C&T programs, both OECA and OPP recommend a 15 percent match, which may be met through in-kind services; however, the amount of the match is negotiable. The match is calculated as a percentage of the total EPA and grantee contributions combined [i.e., EPA funds (85 percent) + grantee funds (15 percent) = total funds (100 percent)]. It is important to remember that although project officers engage in cooperative agreement negotiations and may suggest target funding amounts, there should be no promise of funding, as the final award document prepared by the Grants Management Office is the official offer for monies, and unforeseen changes in available funding (or other changes) could impact the total amount the applicant receives, or even prevent an assistance agreement from being awarded.

As stated above, each application for cooperative agreement funds also must include a work plan consisting of a description of the work to be conducted and a schedule for accomplishment of the outputs and activities. Funding provided to states and tribes must be commensurate with the tasks to be undertaken. In developing the work plan, the grantee must include, at a minimum, a description of:

1. The work product(s) to be completed;
2. The incremental steps to accomplish the work product(s) and the time frames in which each step would be completed;
3. The identified costs associated with each activity, incremental step(s) and/or work product(s);
4. The method to be used to evaluate the success of the work product;
5. The programmatic measures or environmental indicators used to evaluate long-term progress;
6. A completion date for each work product task; and
7. The responsible party for completion of each work product.

The project officer should review proposed work products vis-a-vis funding requested to determine if tasks and anticipated costs are appropriate. It is important to note that, as opposed to PPGs, consolidated cooperative agreements require expenditures of pesticide enforcement and pesticide program funding to be tracked separately by the grantee once cooperative agreement funding is awarded.

The FIFRA Cooperative Agreement Guidance includes a checklist (Appendix 8), which the project officer can use to verify that all required information is present. The project officer needs to ensure that the technical quality of the proposed program meets national and regional requirements. If desired, the project officer may also solicit comments on the draft from the following:

1. Grants Management Office.
2. Regional Counsel.

3. Office of Pesticides Programs (Field and External Affairs Division).
4. Office of Enforcement and Compliance Assurance (Pesticides, Wastes and Toxics Branch, Office of Compliance).

All reviewers should be made aware of any review time limits to better facilitate changes to the draft.

The project officer will consolidate comments and request any necessary changes. It is preferred that changes be made via amended pages to the application package rather than by conditions to the award. Most conditions to the award are placed by the Grants Management Office, though programmatic conditions can be inserted by the project officer into the Funding Recommendation and those conditions will be reflected in the award. The project officer can request that the Grants Management Office place specific conditions on awards, but this usually is done only when negotiations with the grantee have failed. The project officer should contact the Grants Management Office as early as possible and consult with them closely whenever specific grant conditions are being considered. Specific conditions can be found in [2 C.F.R. Part 200.207](#), and if additional steps must be taken, 2 C.F.R. 200 provides [Remedies for Noncompliance](#).

The completed and signed final application package must be submitted to the Regional Grants Management Office at least 60 days prior to the requested award date (or other time period set by the Regional Grants Management Office).

When EPA regional pesticide program personnel are satisfied with the completed application, they issue a funding request to the Grants Management Office. The request may include necessary conditions to be placed on the award. Project officers may select or add terms and conditions to the funding request, for inclusion in the award document. The Grants Management Office prepares an award document for signature by the award official. The agreement/amendment is then forwarded to the grantee, though no signature is required. Once the award has been signed by the award official, usually the regional administrator, the grantee cannot make any changes to that particular package. From that point, changes have to be made through the grant amendment process.

Copies of the signed award form should be distributed to the Tribal Agency Director, State or Tribal Division Director, State or Tribal Program Chief, EPA Regional Branch or Section Chief, and project officer.

PPG APPLICATIONS

There are different requirements that pertain to preparing a PPG application. In addition to those application components listed in Chapter 6, PPG applications must include:

1. A list of the environmental programs and the amount of funds from each program to be combined in the PPG.
2. A consolidated budget.
3. A consolidated work plan that addresses each program's activities being combined in the grant and that meets the requirements of 40 C.F.R. Section 35.107.
4. A rationale, commensurate with the extent of any programmatic flexibility (i.e., increased effort in some programs and decreased effort in others) indicated in the work plan, that explains the basis for the applicant's priorities, the expected environmental or other benefits to be achieved,

and the anticipated impact on any environmental programs or program areas proposed for reduced effort.

A state or tribal agency seeking programmatic flexibility also is encouraged to include a description of efforts to involve the public in developing the state or tribal agency's priorities.

For more information, project officers should refer to the following:

1. Best Practices Guide for PPGs with States (June 2014).
2. Best Practices Guide for PPGs with Tribes (March 2011).
3. Grants Policy Issuance (GPI) 15-01 Performance Partnership Grants for States.

REQUIRED DOCUMENTS

If an applicant receives funding for development or implementation of its pesticide regulatory program, EPA requires that certain pesticide-specific enforcement related documents be developed. For the most part, the documents listed below would be based upon provisions and authorities within state or tribal law. The documents may be developed individually or in combination, as long as the various required elements are included. These documents, once developed, can also be used to support any federal action that may be taken as a result of a tribal pesticide inspection. If various documents need to be developed or updated, work on these documents could be included in the negotiated work plan.

NEUTRAL INSPECTION SCHEME

A neutral inspection scheme contains criteria that will be applied in selecting locations for compliance monitoring (inspection) activities. Generally, it is used to ensure that an excessive number of inspections are not conducted at one location if no prior record of violations is established. The scheme should indicate how often various types of inspections should occur and on what basis. Grantees should develop neutral inspection schemes that address all the types of inspections (e.g., agricultural use, non-agricultural use, etc.) that will be conducted and that ensure adequate inspection coverage of the universe of entities.

FEDERAL FACILITIES INSPECTION SCHEME

The tribe or state and EPA region should agree on a plan to ensure adequate inspection coverage of federal facilities located in the state or area of Indian country. In most cases, the regional office will negotiate a commitment for the grantee to conduct an agreed upon number of federal facility inspections. These inspections should be subsets of the categories of inspections routinely conducted in the pesticide program, including but not limited to: agricultural use, non-agricultural use, experimental use, marketplace, and certified applicator records. A plan for conducting inspections of federal facilities could be prepared as part of the neutral inspection scheme.

ENFORCEMENT RESPONSE POLICY

An enforcement response policy, also known as a level of action policy, is required for each grantee conducting enforcement activities under a FIFRA agreement. Project officers should provide all necessary assistance to the state lead agency or tribe in the development of the policy. Such a policy should be designed to provide fair and equitable treatment of the regulated community by ensuring that similar enforcement responses and comparable penalty assessments will be made for comparable violations, with swift resolution of environmental problems. It also should be designed to deter future violations. For each potential type of violation under state or tribal law, the recipient's enforcement response policy should provide a mechanism for determining level of gravity; a list of enforcement remedies available for each type and level of violation; an escalation of penalties for second and subsequent violations; a consideration of potential pollution prevention enforcement penalties and/or settlement of enforcement cases; and a timetable that the grantee will follow to ensure the timely investigation of complaints and the timely issuance of enforcement actions when violations are detected.

PRIORITY SETTING PLAN

The "FIFRA Cooperative Agreement Guidance" requires a priority setting plan for inspections and investigations, addressing grantee and EPA-identified priorities. For more information on setting priorities, applicants should refer to the FIFRA Compliance Monitoring Strategy and the Enforcement Priority Setting Guidance; both provided in the FIFRA Cooperative Agreement Guidance.

QUALITY MANAGEMENT PLANS

EPA Order 5360.1 A2 (now referred to as CIO 2105.0) establishes policy and program requirements for quality assurance of environmentally related measurements performed by or for EPA. The Order is supported by a quality assurance (QA) rule at 2 CFR 1500.11. Guidance for the development of QA program and project plans is available from regional quality assurance/quality control personnel or at [QA Guidance](#).

For projects involving environmental programs, EPA assistance agreement recipients must implement or have implemented a quality system conforming to the American National Standard ASQ/ANSI E4 2014, Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

Documentation Needed from Applicant:

1. All applicants for EPA assistance shall submit a Quality Management Plan (QMP) prepared in accordance with the specifications provided in EPA Requirements for Quality Management Plans (QA/R-2) (EPA 2001), or documentation determined by EPA to be equivalent to R-2, which describes the quality system implemented by the applicant.
2. The QMP shall be reviewed and approved by the EPA project officer and the EPA Quality

Assurance Manager (or designee), as a condition for awarding any assistance agreement. The QMP must be submitted as part of the application. If the QMP is not submitted as part of the application and EPA decides to fund the project, EPA will include a term and condition in the assistance agreement. This term and condition requires the recipient to submit the QMP within a specified time after award of the agreement and notifies the recipient that they may not begin work involving environmental programs until the EPA project officer informs them that the QMP has been approved.

3. The Assistance Agreement requires the recipient to submit Quality Assurance Project Plans (QAPPs) to EPA for review and approval by the EPA project officer and EPA Quality Assurance Manager before undertaking any work involving environmental measurements or data generation. QAPPs shall be prepared using EPA Requirements for Quality Assurance Project Plans (QA/R-5) (EPA 2001).
4. Approval of the recipient's QMP by the EPA project officer and the EPA Quality Assurance Manager, may allow delegation of the authority to review and approve QAPPs to the recipient based on procedures documented in the QMP.

Agency Documentation:

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

The same QMP must also define the respective responsibilities of the EPA project officer and the EPA quality assurance manager in reviewing and approving QMPs and QAPPs submitted to the EPA project officer for review and approval.

Lab Competency:

Agency Policy Directive Number FEM-2012-02, Revision 1 requires that organizations performing activities that use or generate environmental data paid for by an assistance agreement must provide the Agency with a demonstration of competency in the field(s) of expertise. This policy applies to competitive and non-competitive assistance agreements expected to exceed a total maximum value of \$200,000 (in federal funding). Demonstration of lab competency may include but is not be limited to:

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

It should be noted that whoever is paying for the data specifies the accepted demonstration of competency. For example, a region paying for the laboratory to do FIFRA residue samples for enforcement gets to specify what certification they will accept, if they want proficiency samples, whether or not the QMP and QAPP are acceptable, and what quality assurance and quality control is required. For more information, see EPA's [Policy](#). This information is also in the FIFRA Cooperative Agreement Guidance.

STATE/TRIBAL VERSUS FEDERAL FISCAL YEARS

The state/tribal fiscal year is a 12-month budget period set by the state or tribe. Common state/tribal fiscal years are January– December, July – June, and October – September. The federal fiscal year has been designated by Congress to be from October – September. EPA prefers, but does not require, that grants and cooperative agreements conform to the federal fiscal year. That timetable simplifies funding and reporting. Awards, however, may correlate to a differing state/tribal fiscal year.

FUNDING

CERTIFICATION AND TRAINING PROGRAMS

FIFRA Section 23(a)(2) requires that the grantee provide a 50 percent match for funding provided by EPA for certification and training programs. For example, if EPA provides \$50,000, the state or tribe must provide \$50,000, for a total project cost of \$100,000. Generally, other federal funds may not be used to match the EPA agreement. For more information on the award of certification and training grants to tribes, please see Chapter 8.

ENFORCEMENT AND PROGRAMMATIC ACTIVITIES

The amount of EPA funding provided for state or tribal pesticide programs is not limited by statute. The amount of federal funding provided must be commensurate with negotiated and approved work plan tasks. A recipient match of 15 percent of the total budget is recommended and can be cash or in-kind. Examples of in-kind matches are the cost of a vehicle for the pesticide inspector or technician; salary time not included in the budget, such as time invested by state or tribal managers or government; and equipment (not provided by EPA) that is needed by the pesticide inspector or technician to complete work plan tasks. Cooperative agreements that include funding for program initiatives such as pesticides in water, worker protection, and endangered species also utilize the suggested 85/15 federal/grantee funding ratio. Generally, other federal funds may not be used to meet match recommendations.

METHOD OF PAYMENT

Whether a project officer receives the grantee's payment request for approval will depend on the method of payment. Under the reimbursement payment system, in which the grantee uses its own funding and then submits documents to EPA with a request for reimbursement, project officers should review the request and determine if the payment should be made. Generally, a reimbursement method is only used for grantees with a history of compliance concerns, and will usually be accompanied by official action from the Grants Management Office.

Most grantees are under an advanced payment system, which means that grantees will be able to use EPA funds for immediate expenses. Under the Automated Clearinghouse (ACH) payment system, the project officer and the Grants Management Office will not see the payment request before it is made. The grantee sends the request directly to the Department of Treasury. Under the Automated Standard

Application Payment (ASAP), the grantee logs in to ASAP and submits an electronic payment request. In most circumstances, the Department of Treasury then sends the grantee the money with no action by EPA. The Grants Management Office and project officer will not see the payment request. Payment is usually made in less than 24 hours. There are options under the advanced payment system that would limit the funds a grantee may access without approval from the EPA.

RECORD KEEPING

Grantees must comply with 2 C.F.R. Part 1500.6 concerning accounting records. In general, grantees must expend and account for funds from EPA in accordance with state or tribal laws and procedures that control their own funds. Program officials are encouraged to develop personal time cards and daily activity records that are easy to use and distinguish between various pesticide program activities (e.g., certification, enforcement, and program initiatives).

When two grants are used to share the cost of a piece of equipment, it is mandatory to keep accurate records on the use of the equipment under both programs. It is not recommended that equipment be purchased under two grants if the matching funds differ (e.g., 15 percent versus 50 percent) because of the complexity of the record keeping.

The grantee files an end-of-year Financial Status Report, using Standard Form 269A, with the Las Vegas Finance Center (LVFC) to report the status of program funds. If actual expenditures of grant funds differed from projections in the grant application, the Financial Status Report should be accompanied by an amended budget page and appropriate justification. Object cost categories (e.g., personnel, fringe benefits, travel, equipment, supplies, contractual, and construction) may vary up to 10 percent without requiring EPA approval and grant amendments. Grantees are encouraged to submit their FFR as soon as possible to the EPA regions, but no later than 90 days after the end of the project period. Unexpended prior year funds (carryover funds) are no longer returned to grantees. The focus is now completing work plans and drawing down funds accordingly, prior to expiration of the grant.

AUDITS

In accordance with OMB Circular A-133, grantees must arrange for “single audits” if they expend more than \$750,000 in Federal funds in their fiscal year, to be completed annually. Those audits will address financial statements, internal controls, and whether money was spent in accordance with the award agreements. A copy of the audit report with any irregularities will be submitted to EPA. Costs for performing the audit may be charged to the grant; if more than one source of federal funds exists, the costs must be allocated accordingly. For more information on OMB Circular A-133, contact the Office of Grants and Debarment.

CHAPTER EIGHT

TRIBAL PESTICIDE COOPERATIVE AGREEMENTS

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INTRODUCTION

The purpose of this chapter is to assist project officers in the management of FIFRA cooperative agreements with tribal grantees. It provides an overview of a few key legal and policy issues related to EPA's work with federally recognized Indian tribes (tribes) and tribal grantees. This information supplements the information provided in other chapters since, as a general matter, the cooperative agreement process is the same with tribes and states.

UNDERSTANDING THE BASICS

As an EPA project officer working with tribes, you should be aware of various policies and trainings that guide EPA's working relationships with tribes. The "Working Effectively with Tribal Governments" training course is required for all EPA personnel and presents many of the key overarching considerations and policies that guide all of EPA's interactions with tribes.

For the purposes of this chapter, when we use the term "tribe" we are referring to the tribal government of a federally recognized Indian tribe.

FEDERALLY RECOGNIZED TRIBES AND THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

The United States government has a unique legal and political relationship with Indian tribes as provided by the United States Constitution, treaties, statutes, executive orders, and court decisions. The special relationship federally recognized tribes have with the United States is a "government-to-government relationship." Based on this relationship, EPA works directly with tribal governments, which are sovereign governments with inherent powers of self-government, rather than political subdivisions of states.

A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation. As of 2017, there are 567 federally recognized tribes spread throughout the United States. This number changes over time as additional tribes meet the qualifications to be recognized. Over 200 of the federally recognized tribes are located in Alaska and are often referred to as Alaska Native Villages. The most recent Bureau of Indian Affairs list of federally recognized tribes is available at [Federally Recognized Tribes](#).

DEFINITION OF INDIAN COUNTRY

The term "Indian country" is defined by federal statute (18 U.S. Code § 1151) as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States..., (b) all dependent Indian communities within the borders of the United States..., and (c) all Indian allotments, the Indian titles to which have not been extinguished..." You may also hear the terms "tribal lands" or "Indian lands" used interchangeably with the term "Indian country." Indian country, however, is the preferred term that is grounded in relevant federal statute.

Most but not all federally recognized tribes have a reservation or a land base. Approximately 56.2 million acres of land are held in trust by the United States for various Indian tribes and individuals. There are approximately 326 Indian land areas in the United States administered as federal Indian reservations, as well as additional Indian country lands including dependent Indian communities and Indian allotments.

JURISDICTION IN INDIAN COUNTRY

The United States has layers of federal, state, and local authority. Frequently, a city, county, state, and/or the federal government may simultaneously have jurisdiction over various activities. In Indian country, tribes and the federal government generally have jurisdiction, and state and local governments do not. Both tribes and the federal government have authorities to administer environmental programs within Indian country. When jurisdictional questions are raised regarding activities under EPA programs in Indian country, project officers should consult the Indian law specialists in the Office of Regional Counsel and/or the Office of General Counsel.

TRIBAL INTERESTS

Tribal interests can include both on-reservation and off-reservation activities, sometimes extending hundreds of miles. For example, there could be concerns about pesticide spray drift into Indian country from sites outside Indian country, or there could be impacts to tribal resources in areas outside of Indian country, including ceded lands in which tribes have treaty or other federally protected rights to natural resources such as the right to hunt, fish and gather (e.g., usual and accustomed fishing areas). Tribal and federal responses to activities that may affect tribal interests could raise jurisdictional issues. Project officers should consult Indian law specialists in the Office of Regional Counsel and/or the Office of General Counsel when these types of jurisdictional questions arise.

POLICIES THAT GUIDE EPA'S WORK WITH TRIBES

EPA has developed policies to guide the Agency's work with tribes based on federal laws and regulations, Presidential Executive Orders and Presidential Memoranda. Links to these documents and other resources can be found in the Appendix of this chapter.

1984 INDIAN POLICY

On November 8, 1984, EPA issued its "Policy for the Administration of Environmental Programs on Indian Reservations" (1984 Indian Policy). In doing so, EPA became the first federal agency to adopt a formal Indian policy to guide its relations with tribal governments in the administration of its programs.

The 1984 Indian Policy represented and continues to represent EPA's commitment to our partnership with federally recognized Indian tribes and tribal self-governance in implementing environmental-protection programs.

The 1984 Indian Policy outlines nine principles that guide the Agency in interacting with tribes and administering environmental programs to protect tribal health and the environment. The nine principles are:

1. EPA stands ready to work with tribal governments on a government-to-government basis, not as subdivisions of other governments.
2. EPA recognizes tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with EPA standards and regulations
3. EPA will take affirmative steps to encourage and help tribes assume regulatory and program management responsibilities for reservation lands.
4. EPA will take appropriate steps to remove existing legal and procedural impediments to working directly and effectively with tribal governments on reservation programs.
5. EPA, in keeping with the federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect reservation environments.
6. EPA will encourage cooperation between tribal, state, and local governments to resolve environmental problems of mutual concern.
7. EPA will work with other federal agencies that have related responsibilities on Indian reservations to enlist their interest and support in cooperative efforts to help tribes assume environmental program responsibilities for reservations.
8. EPA will strive to assure compliance with environmental statutes and regulations on Indian reservations.
9. EPA will incorporate these Indian policy goals into its planning and management activities, including its budget, operating guidance, legislative initiatives, management accountability system and ongoing policy and regulation development processes.

CONSULTATION AND COORDINATION WITH TRIBAL GOVERNMENTS

EPA's tribal consultation and coordination activities are guided by Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (November 6, 2000), the 1984 Indian Policy (see above), the "EPA Policy on Consultation and Coordination with Indian Tribes" (Tribal Consultation Policy) (May 4, 2011), and the "Consultation Guidance for Discussing Tribal Treaty Rights" (February 19, 2016). In addition, a number of EPA Regions have region-specific policies and guidance specifically designed to facilitate consultation and coordination with tribal governments within their areas.

Executive Order 13175 directs federal agencies to consult with tribes when certain agency actions have "tribal implications" (e.g., substantial direct effects on tribes) and, for rules, that meet other criteria. EPA's Tribal Consultation Policy addresses the requirements of Executive Order 13175 and, consistent with the 1984 Indian Policy, also provides a broader threshold for initiating the Agency's government-to-government consultation with tribes. EPA's policy is to consult with tribes on a government-to-government basis when an Agency action or decision "may affect tribal interests." The Consultation Policy contains a non-exclusive list of activities that may warrant consultation, such as:

- Regulations or rules.
- Policies, guidance documents, directives.

- Priority planning development.
- Permits.
- Civil enforcement and compliance monitoring actions.
- State or tribal authorizations or delegations.

Note that EPA’s primary guidance on consultation in the context of civil enforcement and compliance monitoring matters involving tribes can be found in “Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy,” (January 17, 2001) and “Questions and Answers on the Tribal Enforcement Process” (April 17, 2007). Both are intended to complement the Tribal Consultation Policy to ensure appropriate consultation with tribes on civil enforcement matters.

EPA’s Consultation Guidance for Discussing Tribal Treaty Rights contains affirmative steps for the Agency to take during consultations with tribes when an EPA action occurs in a specific geographic location and a resource-based treaty right, or an environmental condition necessary to support the treaty-protected resource, may be affected by EPA’s action.

Consultation may be a one-time or ongoing dialogue, and may include several methods of interaction in different forms – ranging from letters, phone calls and conference calls, to group or individual meetings – that facilitate “meaningful communication and coordination between EPA and tribal officials prior to EPA taking action or implementing decisions that may affect tribes.” Consultation may also be undertaken by different EPA organizations within the Agency’s headquarters or regional offices. To navigate the complexities of tribal consultation, each region and headquarters program office has a Tribal Consultation Advisor (TCA) to help you with any consultation questions.

In EPA’s Pesticides Program, EPA has consulted on the development of the “EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides (RUPs) within Indian Country” (February 6, 2014) and the “Nationwide Final Program Under the Federal Insecticide, Fungicide and Rodenticide Act Section 2(ee)(6) Regarding Use of Section 18 Emergency Exemption and Section 24(c) Special Local Need Products in Indian Country” (May 6, 2013).

Project officers should contact the EPA regional tribal office to see if the EPA Tribal Consultation Policy is applicable to their actions or decisions.

ENVIRONMENTAL JUSTICE

Environmental justice is the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. To achieve the goal of environmental justice, EPA seeks to protect the environment and health of communities and provide them access to the Agency’s decision-making processes, so that everyone has a safe and healthy environment in which to live, learn, work, and play. Each EPA region and headquarters program office has a Tribal and Indigenous Peoples Advisor to help you with any consultation questions. Project officers should contact the EPA regional environmental justice office and review EPA’s “Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples” (July 24, 2014) to better understand how to integrate environmental justice principles in your work.

NEGOTIATING AND MANAGING TRIBAL PESTICIDE COOPERATIVE AGREEMENTS

Project officers should use the FIFRA Cooperative Agreement Guidance as the basis for negotiating workplans with tribal grantees of FIFRA funding. EPA recognizes that tribes may have different levels of available resources and program capacity than states. Therefore, all program areas or activities listed in the FIFRA Cooperative Agreement Guidance may not be appropriate for all tribes and do not necessarily need to be included in each tribal cooperative agreement. Project officers may negotiate with tribes to focus cooperative agreements and workplans on activities that are appropriate for the capacity and needs of each tribe's pesticide program.

TRIBAL REQUESTS FOR EPA FUNDING

OPP and OECA developed the "Final Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements" (January 13, 2011) to set forth EPA's expectations for tribal pesticide cooperative agreements and assist project officers in evaluating new tribal requests for FIFRA funding. The guidance provides information on evaluating the need for a tribal pesticide program and tribal capacity for implementation. Project officers should use this guidance to assess a tribe's request for a continuing federally-funded pesticide field program and/or enforcement cooperative agreement. The guidance explains the eligibility criteria for FIFRA funding, the process of applying for FIFRA funds, how the funds will be distributed to tribes that are eligible, and the performance expectations of all tribes that receive these funds. This guidance is designed to help EPA identify and prioritize proposals and to distribute funds in a fair and nationally consistent manner.

The guidance contains a checklist for project officers to use to determine whether a tribe meets criteria in the guidance and is eligible for new or renewed FIFRA funding. The checklist includes questions related to the general environmental characteristics, the status of the tribal environmental program, and the number and types of inspection targets. The project officer completes the checklist based on information provided by a tribe.

BASIC ELEMENTS OF AN EPA-FUNDED TRIBAL PESTICIDE PROGRAM

EPA's "Guidance on Basic Elements of an EPA-Funded Tribal Pesticide Program" (March 11, 2002) describes basic elements for an EPA-funded tribal pesticide program. The guidance is intended primarily for EPA regional staff who provide assistance to tribes as tribes assess their pesticide program needs, negotiate tribal cooperative agreements, and implement pesticide programs where they are desired and needed. While the guidance focuses mainly on cooperative agreements authorized under FIFRA Section 23(a), it also briefly discusses other cooperative agreement funding that may be available from EPA to address tribal pesticide issues. It provides the flexibility for tribes to create and adopt programs that accommodate their own needs and priorities while defining basic, nationally consistent program elements that ensure EPA's equitable support of tribal pesticide programs. Note that "Final Guidance for Funding Development and Administration of Tribal Pesticide Field Program and Enforcement Cooperative Agreements" (January 13, 2011) referenced above does not replace the 2002 Basic Elements Guidance. The 2011 Guidance provides information on funding development and

administration of tribal pesticide field program and enforcement cooperative agreements not detailed in the 2002 Basic Element Guidance.

OTHER SOURCES OF INFORMATION

When evaluating tribal funding requests, the project officer should gather any available pertinent information that may be useful prior to recommending to management that EPA award funding, including the tribe's prior pesticide and enforcement work and performance.

OTHER PROGRAMS

Project officers should consult with project officers in other EPA program offices regarding the prospective grantee's history of meeting grant commitments, compliance with programmatic and administrative terms and conditions, and timeliness in submitting negotiated deliverables. Grant performance history is an important consideration for the project officer when approaching negotiations on the tribe's workplan and setting expectations for performance.

GRANTS MANAGEMENT OFFICE

Project officers should consult with the EPA regional Grants Management Specialist assigned to a particular tribe to ensure that the prospective grantee has not been identified as "high risk" and that there are no barriers to the tribe meeting fiscal grant responsibilities.

OFFICE OF PESTICIDE PROGRAMS (OPP) AND OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE (OECA)

Project officers should work closely with the OPP tribal coordinators and OECA staff who manage FIFRA funding for tribes to assess the availability of funds for a new cooperative agreement with a tribe.

NEGOTIATING TRIBAL COOPERATIVE AGREEMENTS

Information about negotiating and managing pesticide cooperative agreements can be found in other chapters of the PO Manual. Below are some additional details that may be helpful when working with tribes.

WORKPLAN ACTIVITIES AND FUNDING

The use of FIFRA funding for tribal pesticide programs should align with the FIFRA Cooperative Agreement Guidance and the specific priorities of the tribe. Cooperative agreements may include any of the following four scenarios to align with the tribe's needs and the EPA funding that is available and suitable for the tribe's program:

- Consolidated cooperative agreements that include funding from OECA and OPP.

- Inspection/enforcement cooperative agreements that include OECA-supported tasks and funding only.
- Field program cooperative agreements that include OPP-supported tasks and funding only.
- Any of the above consolidated with other non-FIFRA EPA grant programs in a Performance Partnership Grant (PPG).

The types of funding a tribe receives will determine the types of activities the tribe can implement under the cooperative agreement. For example, tribes that only receive OPP funding, would not be required to complete any of the OECA activities under the FIFRA Cooperative Agreement Guidance. When creating the workplan and determining the activities that the tribe will carry out, project officers should walk through the FIFRA Cooperative Agreement Guidance with the tribe and identify all of the activities that are relevant for the tribe's pesticide program. With consultation from OPP and OECA, project officers may choose to add activities to the workplan that are not explicitly listed in the FIFRA Cooperative Agreement Guidance if the activities address specific high priority pesticide program needs of the tribe. Tribes should submit a workplan that is as specific and quantifiable as possible regarding the deliverables that will be completed under each program area.

When negotiating the types and quantities of workplan activities, project officers should be aware that many tribal programs have a small staff, at times only one person, responsible for implementing all of the workplan activities and administrative tasks. If this is the case, unplanned events can have a significant effect on the tribe's ability to meet grant commitments. To the extent possible, project officers should try to anticipate major influences, such as new rules or staff changes, in the coming grant period and account for these influences when developing the workplan. For example, if a tribal pesticide program has a new inspector undergoing training, then the workplan should document inspector training milestones and reduce the number of inspections the program is required to complete in the first year or two. Project officers should plan to support tribal pesticide program staff throughout the year with technical assistance, training, and other support.

Project officers should be prepared to re-negotiate a workplan mid-year if significant changes in the tribe's program will hamper the tribe's ability to meet the originally established workplan commitments, as long as the tribe fulfills an appropriate level of productivity that aligns with the amount of funding the tribe receives.

NEGOTIATING A FUNDING MATCH

The current FIFRA Cooperative Agreement Guidance suggests a 15 percent match. However, FIFRA does not require a specific match amount for cooperative agreements. Therefore, project officers have discretion when negotiating the cost sharing required from the tribe. EPA can also negotiate how the grantee's match is met, for example whether it is a monetary or in-kind match. Many tribes have negotiated a match that is less than 15 percent. Most circuit rider programs (cooperative agreements that fund one tribe to provide pesticide and/or enforcement expertise for multiple tribes) do not contribute a match because it would be unfair to require one tribe to contribute when more than one tribe benefits from the program.

INDIRECT COST RATES (IDC)

The tribe will be required to submit the approved IDC rate paperwork to EPA prior to claiming and receiving funding for indirect costs. When negotiating a cooperative agreement, a project officer should inquire about the tribe's annual indirect cost rate approval status and the amount of the IDC. If there is no IDC rate in place at the time of workplan negotiation, the tribe may use the prior year's rate for negotiation purposes. Project officers should be aware that indirect cost rates can vary widely between tribes and can change dramatically from year to year. If the final IDC is significantly different from the estimated rate, a grantee may have difficulty completing negotiated activities or spending all of their grant funding. Project officers should review the "Interim Indirect Cost Rate Policy for EPA Tribal Grants" referenced in the Appendix of this chapter.

EVALUATING PERFORMANCE

Tribal pesticide programs are expected to meet all workplan commitments. Chapter 10 provides the project officer with guidance on conducting mid-year and end-of-year performance evaluations. However, project officers are advised to monitor performance informally more frequently throughout the year to ensure that any performance issues are identified and addressed as they arise. Frequent communication allows the project officer to assess whether the workplan needs to be renegotiated during the grant term to account for any unforeseen circumstances or changes in the tribe's pesticide program priorities. If the workplan is renegotiated mid-year, project officers should make sure the new workplan reflects an appropriate level of productivity that matches the amount of funding the tribe receives.

All missed commitments, as well as any technical assistance and general assistance given to the tribe to improve performance, should be documented. Performance can be evaluated over multiple grant terms. Underperformance in a small number of commitments during one year should be treated differently from repeated documented problems for successive years without sufficient justification. If a project officer is concerned about a tribe's repeated underperformance, then the project officer should work with the tribe to identify the support that is needed for the tribe to improve performance. Project officers should create and document a corrective action plan that identifies how the support will be provided and the specific milestones a tribe will need to meet over the remainder of the grant term.

POINTS TO REMEMBER WHEN WORKING WITH TRIBES

Cross-cultural understanding and communication is critical to the project officer's relationship with a tribe. As an EPA representative, project officers should be sensitive to the uniqueness of each tribe and its effect on your working relationship. Some of the people you will work with may have different ways of communicating and making decisions. Keep an open mind, be flexible in your opinions, be receptive to new behaviors and attitudes, and consider the following:

1. Incorporate the Indian Policy's goals into planning and management activities. The 1984 Indian Policy states that "[t]he Agency will take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities for reservation lands." The core

principle of the 1984 Indian Policy is a commitment to working with federally recognized tribes on a government-to-government basis to enhance environmental protection.

2. Each tribe is unique. There are numerous variations among tribes in their governmental and economic infrastructures, land bases, and land types, as well as tribes' relationships with federal, state and local governments, and non-tribal members. Become familiar with a tribe's individual circumstances and how those circumstances could affect the tribe's work with EPA.
3. Maintain respect for tribal self-government and sovereignty, federal treaty and other protected tribal rights, and responsibilities arising out of the federal government's unique relationship with each tribal government. For example, a tribe's history with the federal government can impact how the Agency works with a tribe.
4. Communication with tribes should be in a manner appropriate to their technological resources and unique circumstances.
5. Tribal governments often deal with significant unemployment and other challenges, including concerns related to education, health, and welfare. In many instances, tribal governments are understaffed and have limited resources.
6. Tribal environmental offices carry out a wide range of environmental programs, including those related to managing solid waste, protecting water resources and emergency response activities. These issues often take priority over routine pesticide program work.
7. In many cases, federal money is the only source of funding for many tribal environmental programs. Tribal pesticide programs often rely totally on federal dollars.
8. EPA should partner with other federal agencies and tribal organizations as appropriate to provide tribes with pesticide program support.
9. Tribal pesticide programs may have concerns that do not fit EPA's historical programmatic "model", such as:
 - a. Preserving subsistence ways of living, including but not limited to gathering of food, medicine, basketry materials, or ceremonial materials.
 - b. Protecting natural resources, including those relating to rights protected through treaties or other federal laws, such as the right to hunt, fish, or gather on a reservation and off-reservation areas.
 - c. Protecting cultural information and locations of ceremonial, historical or religious significance.
10. Tribes can bring a different perspective to EPA's work. Traditional ecological knowledge is often maintained and used, for example, to control pests.
11. In a tribal pesticide program, there is often only one (and sometimes less than one) FTE who is responsible for implementing the entire program, including administrative and grant tasks, conducting inspections, taking enforcement action, conducting education and outreach, implementing any applicable program activities, coordinating with state and local agencies, and updating policies, codes and agreements as necessary. Plan on an ongoing need for EPA to provide technical assistance and training to the tribal pesticide program contact(s).
12. Tribal environmental program staff or management turnover may happen frequently and results in a need to re-build capacity by providing new or additional training and technical assistance.
13. Developing/implementing an environmental program, including a pesticides program, takes time, coordination, and great effort.

APPENDIX 8-1 – REGULATIONS AND POLICIES

Grant Regulations and Policies for Tribes and Tribal Consortia

Below are policies and regulations pertaining to tribal grants, cooperative agreements, and Performance Partnership Grants (PPGs). Before making an award, familiarize yourself with the applicable guidance and regulations below. For more information or if you have questions, work with your regional Grants Management Office.

Cooperative Agreements and PPGs with Tribes

1. Environmental Program Grants for Tribes

40 C.F.R. Part 35, Subpart B establishes administrative requirements for all grants awarded to tribes and intertribal consortia for the environmental programs listed in 35.501. This subpart supplements requirements in EPA's general grant regulations found at 2 CFR Part 200 and 2 CFR 1500.

2. Streamlining Tribal Grants Management (GPI 13-02)

This policy provides a framework for a streamlined, consistent approach to managing grants, including cooperative agreements, awarded to tribes. The effective date of this policy is November 1, 2013. It applies to all new grant awards, including supplemental and incremental funding amendments for programs under 40 CFR Part 35 Subpart B.

3. Interim Indirect Cost Rate Policy for EPA Tribal Grants

For new assistance agreements made on or after October 1, 2011, this interim policy allows tribes to budget and be reimbursed for all or some portion of indirect costs depending on the tribes' Indirect Cost Rate (ICR) Agreement status and funding availability. It addresses how project officers and tribes should handle fixed/carry forward rates, provisional rates, and final rates when developing cooperative agreement awards. [Indirect Cost Rate Policy for Tribal Grants](#)

4. Best Practices Guide for Performance Partnership Grants with Tribes

This best practices guide is designed to help EPA and tribal officials understand and take full advantage of the features and benefits of Performance Partnership Grants (PPGs), in which tribes may combine multiple environmental program grants into a single grant. PPGs are one of the cornerstones in the National Environmental Performance Partnership System (NEPPS) that serves as the framework for EPA-state-tribal relations. Through answers to frequently asked questions, the guide:

- a. Explains how PPGs can help in achieving agreed-upon environmental and program goals and objectives;
- b. Highlights key regulations, policies and procedures for developing and managing PPGs;
- c. Provides examples showing how PPGs have been used to achieve administrative efficiencies to direct resources where they are needed most.
- d. References 40 CFR 35.530 through 35.538 which sets forth the requirements that are unique to PPGs with tribes and intertribal consortia.

Tribal Consortia

OMB Circulars:

1. OMB Circulars for managing grants that apply to all federal executive agencies. Link provided [OMB Circulars](#)
2. Circular A-110 revised November 19, 1993 as further amended on September 30, 1999

Indirect Cost Rates for EPA Assistance Agreements to Non Profit Organizations (GPI 12-03)

Enacted in March 31, 2012, GPI 12-03 formalized EPA's approach for negotiating and administering indirect cost rates with non-profit organizations including the use of a simplified flat rate option and includes the following:

- EPA allows recipient to budget indirect costs in assistance agreements if the recipient has an approved indirect cost rate agreement (ICRA). Recipients must not charge indirect costs for budget periods outside their ICRA.
- Recipient may budget indirect costs based on a proposed rate but cannot draw down until the recipient has an approved ICRA. An indirect cost rate proposal must be submitted to federal cognizant agency within 90 days of the award date (unless ICR proposal submitted already).
- If the recipient does not have a current ICRA or proposal, and if EPA is the cognizant agency, EPA can allow the recipient to charge a flat indirect cost rate of 10% of salaries and wages. This rate will be used for the life of the assistance agreement.

Direct Implementation Tribal Cooperative Agreements (DITCAs)

The Catalog of Federal Domestic Assistance (CFDA) 66.473 allows tribes and intertribal consortia to help EPA implement federal environmental programs in Indian country, notwithstanding the Federal Grant and Cooperative Agreement Act. DITCAs are negotiated between EPA and tribes and can help tribes build the capacity to manage environmental programs and address specific tribal environmental needs and priorities that are within EPA's authority for direct implementation. EPA retains final decision-making authority and ultimate responsibility for the environmental programs including all regulatory activities. Project officers should contact the EPA American Indian Environmental Office at (202) 564-0303, or the Regional Tribal Contacts for more information regarding the DITCA status of a particular tribe. For more information, link provided [DITCA](#)

CHAPTER NINE

DAY-TO-DAY ACTIVITIES

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INTRODUCTION

Building and maintaining solid working relationships with the grantees are essential to help ensure that the projects will be completed and positive environmental results will be achieved. This chapter provides some useful details on pesticide-specific activities that may be carried out by a project officer, or by the appropriate program specialist, on a day-to-day basis.

GENERAL DAY-TO-DAY ACTIVITIES

Project officers monitor their assigned cooperative agreements on a regular basis.

NEGOTIATING CHANGES

Unexpected changes in projected outputs or program directions may require negotiated amendments to the assistance agreement. Any changes need to be documented and approved. Approval level will vary depending on the change. See 40 C.F.R. 35.114. Grantees need to submit to, and negotiate with, the project officers any changes they wish to make. Project officers must review the changes proposed by the grantee and, in some cases, coordinate with either their manager, the regional grants office or possibly OPP or OECA. The project officer works with the grantee on changes needed and keeps the grantee informed of regional management or grants office decisions.

Changes involving workplan commitments may be explained in a written note from the grantee to the project officer. The project officer shall review, negotiate, and approve the changes to the workplan commitment. The project officer shall keep that written explanation in the grant file as an official record to the workplan commitment. In addition, some short falls may be explained in a written notice by the grantee to the project officer; e.g., change in category of inspections. The grantees should inform the project officers of any expected shortfall as early as possible, so project officers can renegotiate the workplan activity. Any communication regarding the shortfall and solution(s) to the shortfall should also be recorded as part of the grantee’s end-of-year report. If the grantee lost employees early in the project year and could not rehire, renegotiation would be reasonable. However, if employees left late in the year, a simple explanation might suffice. Workplan commitment changes may trigger an administrative change.

Changes involving equipment, workshops and meeting conferences may require review by the EPA regional grants office. It is generally a good practice for project officers to keep the region’s grants office informed of changes requested by the grantees.

For administrative changes, an EPA region's grants office may require documentation prior to approving a change. Changes involving funding may require a "Change Request" or "Amendment" to the assistance agreement. For management or OPP/OECA approval of changes in priorities or workplan activities, the EPA regional pesticide manager will provide direction and contact OPP/OECA as needed. For all approved changes, the project officer should first communicate the agreement(s) made with the grantee via a telephone call, and then document the agreement(s) in a letter or an electronic mail. Project officers are expected to keep the approval documents in the grant files. Changes that are requested and denied should also be documented and kept in the grant file once they have been discussed with the grantee.

TRAINING GRANTEES

Project officers should continually assess the grantee's training needs. When possible, the project officer should assist the grantees in obtaining needed training, whether it be for enforcement purposes or to better understand EPA policies and programs. Examples of training include health and safety courses, regional enforcement workshops, Pesticide Inspector Regulatory Training (PIRT) courses, and Pesticide Regulatory Education Program (PREP) courses.

MEETING PARTICIPATION

Project officers are encouraged to participate in the grantee's enforcement and program staff meetings. Project officers may also be asked to participate in national meetings or workgroups on pesticide topics that are key for their region. Regional pesticide managers will help determine where participation makes sense.

Attendance also may be warranted at meetings with pesticide safety education program (PSEP) educators, industry, growers, environmental groups, state and federal government groups, legislative committees, and others. The level of participation will vary depending on the regional level of interest and staff availability.

LIAISON WORK AND TECHNICAL ASSISTANCE

Effective project officers establish and maintain good working relationships with their grantees. This requires frequent communication and technical support as needed. Project officers should also communicate with other state, tribal and federal agencies as needed.

REGULATORY AND POLICY INTERPRETATIONS

Grantees frequently ask project officers to interpret EPA regulations and policies. When those interpretations are not readily available, project officers should refer the question to their supervisors, program specialists, or EPA Headquarters for interpretation, attaching any available background information. Project officers should also provide technical assistance to the grantees whenever needed. In addition, the project officer should inform the grantees of any relevant new regulation, order, policy, or guidance related to assistance agreements. EPA's Office of Grants and Debarment has a web page that contains links to many regulations, orders, Grants Policy Issuance, and guidance related to

assistance agreements.

ENFORCEMENT COOPERATIVE AGREEMENTS

The following subjects are pertinent to cooperative agreements that include enforcement:

TRAINING GRANTEE'S INSPECTORS

The project officer or other specialists may take the lead when training a new inspector or when training an experienced inspector to do a new type of inspection (e.g., producing establishment, import, export, container/containment, fumigation). If the project officer is the providing instruction, he or she must set a good example and adhere to directives in the EPA FIFRA Inspection Manual. To the greatest extent possible, make sure that classroom and field training are provided as necessary, especially to new inspectors. In addition, notify the grantees of online web-based training courses as they become available. The training curriculum identified in Agency Order 3500.1 is required for inspectors with federal inspector credentials but could also be used as a resource for all inspectors (see Chapter 5).

OVERSIGHT AND JOINT INSPECTIONS

The purpose of an oversight inspection is to monitor a grantee's performance under the assistance agreement while a joint inspection is conducted by EPA and the grantee in accordance with their own statutes and regulatory requirements. Any project officer leading an investigation or participating in a joint inspection with the state or tribe as an inspector would be *required* to have met requirements of Agency Order 3500.1 and have federal inspector credentials (see Chapter 5). Project officers must be familiar with all types of pesticide inspections conducted by the grantees and should be trained in the proper techniques for conducting all of the types of inspections listed in the EPA FIFRA Inspection Manual. It is expected that the project officer or program specialist supply his or her own safety equipment and supplies when accompanying the grantees on inspections where personal protective equipment (PPE) is needed.

OVERSIGHT INSPECTIONS

The project officer or program specialists should periodically accompany each grantee on each type of routine inspection in order to monitor the inspector's performance and to offer constructive advice. Even veteran inspectors can benefit from this association with the project officer. Likewise, the project officer also benefits from such activities. Proper training is necessary to competently oversee grantee's inspections. Clearly indicate to the grantee's management when an oversight inspection for evaluation purposes is being conducted and complete a brief summary of the oversight inspection results and the outcomes.

JOINT INSPECTIONS

For enforcement purposes, EPA may conduct an inspection along with the grantee. This is known as a

joint inspection. Joint inspections provide several benefits. Complicated or extensive investigations are sometimes best accomplished through joint inspections. This also helps EPA to maintain inspection proficiency as well as develop and maintain rapport and credibility with grantee personnel.

OBTAINING FEDERAL INSPECTOR CREDENTIALS

In order for grantee inspectors to conduct FIFRA federal inspections on the behalf of EPA, a Performance Partnership Grant/Cooperative Agreement and Credential Agreement between the EPA Region and the grantee must be in place. The FIFRA Cooperative Agreement Guidance requires each state to have at least one employee with federal inspector credentials, to be used when conducting FIFRA inspections. Some tribal inspectors may need federal inspector credentials to conduct certain inspections, such as those requested to be conducted using federal credentials and federal forms. Project officers and/or enforcement coordinators are expected to assist the grantees in obtaining proper federal inspector credentials.

EPA has the following documents related to federal inspector credentials:

- The 2004 “Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA.”
- The EPA Order 3500.1, *Training Requirements for EPA Personnel Who Are Authorized to Conduct Civil Compliance Inspections/Field Investigations and EPA Inspector Supervisor*, which outlines the basic inspector, program specific, health and safety, on-the-job, and self-study requirements for obtaining initial credentials and the annual refresher training

Upon completion of the initial inspector training, the grantee inspector supervisor submits the “OECA FIFRA Inspector Training Course(s), Self-Study, and On-the-Job Training Completion Certification Form” and the required course completion certificate(s) to the EPA regional pesticide program supervisor or other designated staff. A separate record to track completed training is maintained by the EPA region designated point of contact for state/tribal credentials, or Regional Credentials Contact (RCC). The RCC is responsible for issuing a credential to a grantee inspector and obtaining the Regional Administrator signatures. Each year, all grantee inspectors must (1) complete annual refresher training, which includes program specific, eight-hour health and safety, and inspector skills refresher training; (2) document the refresher training completed; and (3) submit the “OECA Inspector Annual Refresher Training Completion Certification Form” with required course completion certificate(s) to the EPA regional pesticide program supervisor for submission to the RCC.

EPA Order 3510, *EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes*, states that each EPA regional office distributing credentials is responsible for having procedures in place for the maintaining an inspector credential inventory and verifying credential possession. EPA offices which issue credentials must ensure that 10% of credentials issued be inventoried once a year to ensure that the original recipient has the credential in his/her possession. The EPA project officer may be asked to assist in the process for verifying credential possession and informing grantee inspectors of appropriate training classes. The project officer should be kept apprised of all credentialed employees of the grantee and provide assistance related to credentials to the grantees when requested.

It is also the project officer’s responsibility to ensure that credentials are collected and returned to the RCC when the grantees’ inspector no longer needs them or when an employee leaves the employment

of the grantee. The End-of-Year Review may be a good time to review the regional list of federally credentialed inspectors to ensure that any staff with changed job duties or separated staff have been accounted for and credentials returned, as appropriate.

REFERRALS OF SIGNIFICANT USE/MISUSE ALLEGATIONS

Pursuant to FIFRA Section 27(a), when the EPA Regional Office receives a tip/complaint related to significant pesticide use violation(s), the project officer should contact the grantee to determine if the grantee is aware of the incident. If not, the project officer should refer the incident to the grantee. EPA and the grantee will agree on what constitutes significant pesticide use violation(s). Tips/complaints that are not considered significant by EPA and the grantee can still be referred. The project officer may use the “Incident Report Form” in Appendix 9-1. The “State Enforcement Priority Worksheet” in Appendix 9-2 may be used to determine the level of priority for referral. The EPA Region should devise a tracking system for numbering the referrals of these incidents. A referral and tracking system should be negotiated between the EPA regions and the grantees. See Chapter 3 for more information on procedures for referrals to states.

HIGH LEVEL PESTICIDE INCIDENTS

The FIFRA Cooperative Agreement Guidance requires grantees to report high level pesticide incidents involving serious adverse effects which may require close cooperation with EPA or other agencies to conduct an investigation or to bring the incident to resolution. The FIFRA Cooperative Agreement Guidance provides direction and sets forth a process for grantees to report high level pesticide incidents to EPA regions. Each EPA region and its grantees shall determine the best way to capture the reporting process in their workplans.

TRACKING SYSTEM

The project officer should make sure that the grantee has instituted a management system for tracking inspections, violations, and enforcement actions. The Interpretive Rule covers processing complaints and requires “a system for allowing a rapid determination of the status of [a] case.” The FIFRA Cooperative Agreement Guidance requires the grantee to develop/maintain a case tracking system. Project officers should review the grantee’s system to ensure it is workable and tracks cases appropriately.

OTHER ONGOING ACTIVITIES

The project officer serves as a support person to the grantees in many of their activities and is often their most consistent contact with EPA. The following are some of the varied activities in which project officers may be involved:

LABORATORY OVERSIGHT

Laboratories conducting analyses of grantee’s pesticide samples should be visited by project officers or specialists at a frequency deemed adequate by the EPA quality assurance manager. At other times, project officers or specialists may provide guidance concerning training, analysis problems, etc. The project officer can refer to the EPA regional Quality Assurance Officer, or the OPP and OECA Quality

Assurance Officers for further guidance.

CASE REVIEW

Project officers and/or enforcement staff evaluate grantee inspections as part of a mid-year or end-of-year review. However, the project officer and/or enforcement staff should also review cases referred to the EPA regional office for action to ensure they are complete, properly assembled, and of sufficient quality to document violations, as specified in the negotiated workplan. In addition, project officers and/or enforcement staff may be asked to assist the grantee in reviewing complicated or sensitive cases.

OBTAINING LABELS

When needed, the project officer may assist the grantee regarding questions about pesticide registrations using the Office of Pesticide Programs Information Network (OPPIN). They may also refer their grantees to the Pesticide Product Label System (PPLS) database to obtain a pesticide product label.

FIFRA SECTION 18 AND 24(C)

Project officers should be aware of the provisions in FIFRA regarding emergency exemptions (Section 18) and special local need registrations (Section 24(c)). The project officer should be aware of whether a Sections 18 emergency exemption or a 24(c) special local need registration may be needed within a grantee's jurisdiction, and if they/when they have been granted or issued. At the grantee's request, the project officer may also assist the grantee in determining the validity of exemption requests or special local need registrations.

COMPLIANCE MONITORING STRATEGIES

OECA issues compliance monitoring strategies. The project officer should work with the grantee to ensure that these strategies are considered in the overall work load. Occasionally, this may require the renegotiation of commitments and an amendment to an agreement. The FIFRA Compliance Monitoring Strategy is provided in the FIFRA Cooperative Agreement Guidance.

PRIORITY SETTING AND TARGETING INSPECTIONS

The FIFRA Cooperative Agreement Guidance requires grantees to draft, modify, or maintain a priority-setting plan for inspections and investigations. Inspections usually are targeted according to these plans. In some cases, project officers may request that the grantees perform inspections that do not fall within the priority-setting plans; such as, requests for investigations from other EPA regions, EPA headquarters, or states/tribes. Throughout the project period, the project officers also may provide other inspection targets to the grantee, including producer establishment inspections from regional neutral based schemes, exports, and imports. To the extent possible, project officers should identify inspection needs during workplan negotiations. However, workplans should reflect the fact that unforeseen circumstances may arise that require a shift in inspection priorities.

PESTICIDE APPLICATOR CERTIFICATION AND TRAINING GRANTS

The primary role of the project officers and/or the EPA Regional Certification and Training (C&T) coordinators with respect to C&T program responsibilities is to ensure that the states and tribes

continue to implement their pesticide applicator certification programs in accordance with their EPA-approved certification plans, fulfill their annual C&T workplan commitments related to program implementation and reporting and follow all applicable EPA program guidance. Technical assistance on issues related to implementation of the 40 C.F.R. Part 171 rule requirements and the state/tribal plan should be provided to the state and tribal program, EPA managers and program coordinators as well as external stakeholders and partners.

Annual oversight reports should include documentation that program elements have been reviewed, applicable program guidance is being followed and workplan commitments and reporting requirements have been met. In particular, document any potential lapses in the state or tribal C&T programs that would potentially trigger the Agency's responsibilities to withdraw approval of the plan under Part 171. This level of oversight is accomplished through occasional on-site visits as resources permit and other ongoing activities described below.

PROGRAM OVERSIGHT DAY-TO-DAY ACTIVITIES

The "day-to-day" activities of the project officers and/or C&T coordinators related to program oversight and implementation include the following:

1. Ensuring that EPA's applicable National Program Manager (NPM) guidance for Regions for C&T programs is being followed and that required regional activities and reporting for the program are completed in accordance with NPM guidance directives and timelines.
2. Ensuring that EPA's applicable FIFRA Cooperative Agreement Guidance for States and Tribes for C&T programs is being followed and that required program activities and reporting are completed in accordance with the guidance directives and timelines. This includes at a minimum:
 - a. Ensuring that states/tribes commit to the appropriate C&T program activities in their workplan consistent with EPA guidance, and that workplan activities and commitments are carried out according to agreed-upon timelines and conditions; and
 - b. Ensuring that states/tribes complete all annual C&T program reporting requirements in EPA's Certification Plan and Reporting Database (CPARD) system in accordance with the "FIFRA Cooperative Agreement Guidance", and verifying that all the reporting information has been entered correctly and that there are no inconsistencies or discrepancies.
3. Ensuring that any direct implementation responsibilities for C&T programs for states and/or tribes covered under an EPA-implemented certification plan are carried out consistent with the applicable EPA-approved plan for that state/tribe, the Agency's plan implementation guidance and any other applicable guidance.
4. Ensuring that states/tribes are implementing their applicator certification program in accordance with their EPA-approved certification plan. This includes, but is not limited to the following:
 - a. Monitoring recertification programs to ensure the programs conform to standards established in their EPA-approved plan (e.g., ensuring program content is consistent with the approved Continuing Education Units (CEUs) being granted, ensuring program length is appropriate for CEUs being granted, ensuring any other applicable recertification requirements are adhered to);
 - b. Ensuring certification examination processes and procedures are being followed

consistent with the EPA-approved plan. This may include discussing exam certification procedures with the state/tribe; or conducting routine monitoring of state/tribal exam certification sessions to ensure exam security and integrity is being maintained (e.g., ensuring that closed-book written examinations are proctored and closed-book, and there are steps to ensure security and integrity of exams, ensuring that certification applicants aren't allowed to share information or use texting/communication devices, or ensuring that proctors do not provide inappropriate information or resources, etc.); and

5. Ensuring that any state/tribal plan changes or modifications are reported to the Agency as required by the Part 171 regulations and the annual CPARD reporting requirements, that any such changes are consistent with the rule requirements and the Agency's guidance for C&T programs, and that any certification plan changes that constitute a substantial modification of the certification plan are formally approved by EPA in accordance with the EPA Delegation of Authority under FIFRA programs, Delegation 5-2 for Pesticide Applicator Certification Programs.

TECHNICAL ASSISTANCE DAY-TO-DAY ACTIVITIES

The "day-to-day" activities of the project officers and/or C&T coordinators related to providing technical assistance include the following:

1. Being completely familiar with the Part 171 rule and its requirements for state/tribal plans and annual reporting, as well as all associated Agency guidance applicable to the pesticide applicator certification program (e.g., program specific guidance for C&T programs, NPM guidance, FIFRA Cooperative Agreement Guidance) so the project officer/coordinator can be a FIFRA C&T program resource for states and tribes.
2. Reviewing the EPA-approved certification plan(s) for assigned states/tribes and becoming completely familiar with the plan's content and features (e.g., number and types of certification categories, specialized categories, examination procedures, certification period(s), recertification requirements, etc.) so the project officer/coordinator can be a technical resource to internal EPA managers and program coordinators as well as external stakeholders and partners that may have questions about state/tribal certification programs.
3. Reviewing the annual CPARD reporting information for assigned states/tribes and becoming completely familiar with the content of the report(s) so the project officer/coordinator can recognize "trends" in the data, reporting issues, discrepancies or inconsistencies, and be a technical resource to internal EPA managers and program coordinators as well as external stakeholders and partners that may have questions about state/tribal certification programs.
4. Participating in state/tribal applicator certification programs as a technical resource (e.g., participating in applicator recertification programs as a speaker, reviewing recertification training materials in an advisory capacity, reviewing examinations or participating on exam development committees, participating on manual development or review committees, etc.).

PESTICIDE PROGRAM COOPERATIVE AGREEMENTS

The FIFRA Cooperative Agreement Guidance identifies pesticide program activities for which federal funding is available. These activities are managed by project officers but also may include personnel responsible for overseeing the other pesticide activities. Concurrent agreements may be granted to

other state agencies to conduct activities that will support the state lead agency's program. The state lead agency or tribe should be included when negotiating those other agreements.

RECORD KEEPING

It is important for the project officer to retain copies of all relevant documents including, but not limited to: the funding recommendation, the assistance agreement and any change or amendment to the assistance agreement, applicable state legislation or regulation, state legislative or regulatory changes, documentation of all evaluations and oversight activity and all communications with the grantee.

APPENDIX 9-1: INCIDENT REPORT FORM

1. Complaint		2. Log Data		
Confidentiality Request: Yes__ No__		Date Received	Time	Log Number
Name & Address of Complainant		Received By	Referred By	
Telephone	Agency/Company	Type of Referral Phone_____ Visit_____ Letter_____		
Complainant Identity Resident__ Worker__ Government Official__ Other (explain)		Special Response Instructions		
3. Description of Incident				
General Description/Amount of Pesticide		Exact Location of Problem		
		_____ Manufacturer (include EPA establishment number)		
Name of Pesticide Product(s) Involved, EPA Reg. Number		Distributor (include EPA establishment number)		
Date of Incident	Ongoing since	Applicator Name and Address		
4. Human Exposure		5. Environmental Exposure		
Direct Human Exposure Actual_____ Potential_____ None_____		Waterway/Surface Water None Nearby_____ Nearby (distance)_____		
Site Location Residential_____ Workplace_____ Remote_____		Groundwater Contamination Actual_____ Potential_____ None_____ Unknown_____		
Public Water Supply None Nearby_____ Nearby (distance)_____		Animal or Bird Exposure Actual_____ Potential_____ None_____ Unknown_____		
Details of Human Exposure		Agriculture/Food Processing in Area No_____ Yes (describe)_____		

APPENDIX 9-2: STATE ENFORCEMENT PRIORITY WORKSHEET

Incident	Date of Incident	Log Number
Use this worksheet to assist in determining the type and level of response. Assign Points to each category based on evaluation of the incident. Worst case: 200 points Suggested response levels: 100-200 points ' Priority 0-100 points ' Routine	Evaluator	
	Date of Evaluation	
Factors	Point Options	Points Assigned
<u>Public Health Effects</u> Likelihood of exposure to human population	points based on level of exposure Actual 80 to 100 points Probable 60 to 80 points Potential 40 to 60 points Unknown 20 to 40 points	
<u>Environmental Health Effects</u> Likelihood of exposure to the environment	points based on level of exposure Actual 40 to 50 points Probable 30 to 40 points Potential 20 to 30 points Unknown 10 to 20 points	
<u>Enforcement Considerations</u> Need for Legal Action Enforceability Immediate action to obtain evidence that otherwise would be lost or destroyed Other:	Up to 20 points	
<u>Public Considerations</u> Need to respond to expression of concern from the public	Up to 10 points	
<u>Discretionary Factors</u> Type, quality, toxicity of material History of responsible party Remedial action taken by party Frequency of occurrence Reliability of information source Other:	Up to 20 points	
STATE ENFORCEMENT PRIORITY	TOTAL	
Response Determination		
<u>Routine Program Activity</u> ____ Inspection (as part of a neutral inspection scheme) ____ Telephone, letter to responsible party ____ Other:	<u>Priority Response Comments:</u>	

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CHAPTER TEN

MID-YEAR AND END-OF-YEAR EVALUATIONS

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INTRODUCTION

The purpose of this chapter is to discuss the mid-year and end-of-year evaluations EPA regional offices conduct with grantees to evaluate performance. End-of-year evaluations are required by both OPP and OECA. Mid-year evaluations (sometimes referred to as “check-ins”) are not required by OPP or OECA but may be required by the EPA regional offices. Mid-year check-ins provide the opportunity for correcting problems and redirecting activities before they can adversely affect overall performance. Evaluations are benefited by regular communication with the grantee. The workplan should document a grantee’s agreement to participate in the evaluations. All parts of an evaluation (opening conference, the evaluation, the closing conference, communications with grantees) should be adequately documented.

THE NEED FOR EVALUATIONS

Evaluations are necessary because they:

- Ensure that negotiated and approved workplan activities are being conducted within the negotiated time frames.
- Ensure that assistance agreement conditions are being met.
- Ensure that programs are being implemented consistent with the intent of federal, state, and/or tribal law.
- Identify strengths of programs, recognizing the goals, achievements, and contributions made to the pesticide program.
- Identify any weaknesses in or obstacles to the programs.
- Identify performance problem or obstacles to completing negotiated tasks.
- Make recommendations for improvements or resolution of any deficiencies or problem areas.
- Identify grantee’s needs from EPA.
- Identify areas where EPA can provide additional support or technical assistance.

PLANNING THE EVALUATIONS

The time frame for conducting evaluations is negotiated with the grantee. The suggested target time frame is within 60 days after the end of the second quarter (for mid-year evaluation) and fourth quarter (for end-of-year evaluation) of the award period. The project officer may contact the grantee at least two weeks or more before the end of each of these quarters and negotiate the actual dates when the evaluation will occur. The dates scheduled for the evaluation should be convenient for the grantee as well as EPA and should allow the grantee sufficient time to make necessary arrangements. The project officer should provide the grantee with an agenda. The agenda will help determine who should be present at various times during the evaluation. All EPA and grantee personnel to be involved in the evaluation should be identified and contacted to ensure full participation and attendance. The Pesticide Safety Education Program and the state, tribal, or contract laboratory also may be notified depending upon EPA regional guidelines and practices. Ideally, the grantee will reserve a meeting room or other private area

in which the evaluation team can work. Note that some discussions that are part of the evaluation may take place via telephone and, like in-person meetings, need to be documented.

To prepare for the evaluation, the project officer should review the current year's workplan as well as previous evaluation reports to identify prior strengths and weaknesses. In addition, prior to the evaluation, the project officer should review all applicable national and regional documents that are attached to the FIFRA Cooperative Agreement Guidance.

CONDUCTING THE EVALUATION

OPENING CONFERENCE

After introductions, EPA should briefly discuss the purpose and objectives of the evaluation and review the agenda. The project officer should identify any specific issues that need to be addressed and any specific concerns that the grantee wishes to discuss during the evaluation. The project officer and the grantees should use their best judgment as to when and how to address the identified issues; i.e., during the opening conference, the course of the review, or the closing conference. The opening conference also is a good time to discuss previously identified weaknesses, recommendations, and steps taken to correct problems.

EXPLANATION OF METHODOLOGY

An agenda should be prepared by the project officer and provided to the grantee prior to the evaluation meeting. The project officer should explain the evaluation process, the selection of topics to discuss, records for review, persons to be interviewed, depth of the review, and so on. Participants may then separate according to the activities to be evaluated on the agenda.

THE EVALUATION

During the evaluation, the project officer will review all aspects of the grantee's pesticide program, including enforcement, certification and training, and programmatic activities. In each area, the project officer will conduct a quantitative and qualitative review. In general, the quantitative review will consist of reviewing agreed upon quarterly, mid-year, and/or end-of-year accomplishment reports, Pesticide Enforcement Performance Measures reports, and EPA 5700 forms. Qualitative reviews will generally consist of a more in-depth look at the grantee's activities (such as inspection reports, enforcement actions, etc.). The review may include an oversight inspection or other field visit.

ENFORCEMENT

Accomplishment Reports — The FIFRA Workplan and Report Template containing the workplan and reports, narratives, EPA 5700 forms, etc. should be reviewed to determine the current status of accomplishments compared to projections. Accomplishments should be acknowledged, and shortfalls must be addressed. If the project officer is conducting a mid-year

review, plans must be made to rectify any identified problem areas. If appropriate, the workplan can be revised to amend tasks or completion dates.

Accomplishment Priorities —The project officer should ascertain how well the grantee is completing the activities related to the priorities and goals set out in the workplan. If a grantee is not conducting its activities so as to accomplish its goals and objectives, this should be noted in the evaluation report along with a discussion of steps to be taken to address this issue.

Inspection Evaluations —If the grantee is conducting inspections under the cooperative agreement, the project officer should select and review a number of the grantee's inspection files to determine if the grantee is conducting inspections properly and noting potential violations. Do not allow the grantee to select inspection files for review since it may introduce bias. The type of files selected should be representative of the inspections conducted by the grantee. Criteria for selecting files include (1) files from each category of inspection activity and/or focus on a specific type of inspection; (2) files from a variety of enforcement actions, including non-action; (3) files from each inspector's case reports; and (4) files reflective of the priority area(s) indicated in the workplan. A minimum of 10 state inspection files or 10% of the total number of inspections, whichever is greater, should be selected for review. Regions may deviate from this recommendation with a written justification and management approval. The minimum number of files for tribes and territories can be determined by the project officer on a case-by-case basis.

Inspection files should be reviewed in accordance with applicable guidance and manuals and all deficiencies should be noted and communicated to the grantee. Encourage grantees to produce high-quality inspection reports with complete documentation that will support appropriate enforcement actions, in accordance with their enforcement response policy. EPA feedback should address the quality of the inspection reports as well as feedback on enforcement results and any action taken during the project period.

For inspections conducted under federal authority, the file must document that inspections meet the minimum inspection requirements as outlined in the FIFRA Inspection Manual. For inspections conducted under grantee's authority (e.g., marketplace, Worker Protection Standard Use/Misuse) and referred to EPA for enforcement action, files must document adherence to their applicable inspection procedures.

It is recommended that the project officer use forms for recording and summarizing comments on each file reviewed and for noting all deficiencies. Examples of forms for conducting inspection and enforcement decision evaluations are provided in Appendix 10-1, Sample Inspection/Enforcement Evaluation Worksheet, and Appendix 10-2, Sample Producer Establishment/Marketplace Inspection Referral Review Form. Project officers need to document feedback provided to grantees, so that grantees can improve their inspections and EPA can track their progress. A Sample Outline for End-of-Year Case Review Evaluations is provided in Appendix 10-3.

Oversight Inspections — Circumstances that particularly warrant oversight inspections include, but are not limited to, inspections involving newly hired inspectors, concerns about the quality or frequency of grantee's inspector training, and concerns about the quality of grantee's inspections, based on review of the inspection file or other relevant information. As part of the

review, the project officer may accompany the grantee's inspector on inspections to observe how the inspection is conducted. Project officers may rotate oversight inspections in different grantee territories and with different grantee inspectors. It is also suggested to rotate the different inspection categories on subsequent inspections. If an oversight inspection is performed, the grantee's inspector should be evaluated based on national and regional guidance, including the standards set forth in the FIFRA Inspection Manual.

Enforcement Actions — The project officer should review the grantee's files to determine if the grantee is taking appropriate enforcement actions where warranted and achieving compliance from the regulated community. Enforcement responses can include issuing notices of warning, cease-and-desist-type orders, and penalty actions. The project officer should ensure that the grantee's enforcement actions are consistent with its EPA approved enforcement response policies and procedures, including the grantee's penalty policies. When reviewing files, project officers need to document how the enforcement actions were consistent with the grantee's enforcement policies and procedures. Appendix 10-1, Sample Inspection/Evaluation Worksheet can be used to document the evaluation of enforcement actions. All deficiencies, including minor ones that did not impact the enforcement outcomes, should be noted in evaluation worksheets, and communications of those deficiencies need to be documented. Project officers need to communicate, report, and retain records of deficiencies that amount to major issues found during evaluations. This includes documenting formal feedback provided to grantees, so that grantees could improve their inspections and enforcement actions, and EPA can track their progress.

Non-inspection Activities - For a grantee that is conducting non-inspection activities (e.g., inspector workshop, compliance assistance workshop), the project officer should review the activities to determine if these tasks are being completed as negotiated.

Other Enforcement Activities – The project officer must review and evaluate other enforcement activities identified in the workplan, if any; e.g., pick-list items, supplemental/special project activities, and regional guidance activities. The project officer must assure that these tasks are being completed as negotiated.

CERTIFICATION

Annual Reports — Project officers or the program specialists should annually review the state/tribal certification plan information in CPARD and discuss any changes to the plans with their grantees; e.g., changes in certification procedures, changes in examinations or examination procedures, and/or changes to recertification procedures. Significant changes to certification plans should be noted in reviews and EPA Regions must ensure that EPA policy regarding approvals of certification plan modifications is followed.

Components of the Certification Program — The grantee's methods for informing the public about certification requirements and proposed rule changes are important and should be discussed with the project officer and/or program specialist. Certification and recertification programs must be discussed to ensure states and tribes are following their EPA-approved certification plans. Any amendments necessary to the grantee's plan should be planned and discussed. Certification and training materials that are new and unique should be noted. Certification program needs such as factsheets, videos, or brochures should be discussed. Any EPA

or grantee monitoring of applicator certification and/or recertification training programs should be discussed, and EPA and/or grantee evaluation reports should be reviewed. Outcomes and results of the grantee and any EPA monitoring of applicator training should be described and included in the end-of-year report using the FIFRA template.

Project officers should document and discuss any significant enforcement issues related to restricted use pesticides. Project officers should document and discuss the objectives and outcomes of the required meetings between the state lead agency and cooperative extension services. Those meetings should take place at least twice a year to discuss issues related to certification and training of certified applicators.

PROGRAM ACTIVITIES

When reviewing program activities, such as pesticides in water, endangered species protection, and worker protection, the project officers or program specialists should follow national and regional guidance. They also should verify that the grantee is conducting activities satisfactorily, meeting milestones, and providing deliverables as negotiated. The program review area is one in which individuals with more program-specific expertise from the regional office may need to become involved. OPP may also provide assistance if needed.

PRIMACY

The project officer should conduct a primacy review by using the Resource Chart provided in Chapter 3 to ensure that the grantee is maintaining primacy, where applicable.

CLOSING CONFERENCE

A closing conference among evaluation participants should be held upon completion of the evaluation. The closing conference should be documented by the project officer. This is particularly important where discrepancies or problems regarding inspection reports, enforcement decisions or methods to improve reports/enforcement actions are discussed. The project officer should discuss findings, issues and recommendations, including any unresolved problems identified in prior evaluations, and how issues will be addressed by the grantee. Reports and cases with special concerns should be brought forward by the project officer. Performance by both EPA and the grantee should be addressed candidly. If commitments are not being met, the project officer should document the reasons the grantee has not been able to complete the activities in question. The project officer should discuss all relevant issues, so that there will not be surprise disclosures in the evaluation report.

REPORTING THE EVALUATION

A written evaluation report must be submitted to the grantee and be consistent with the current FIFRA Cooperative Agreement Guidance. Regions have agreed that project officers will share draft evaluation reports with the grantees, so the grantees can review and identify any errors and/or clarifications needed before the reports are finalized. Additionally, the EPA regional office will submit the written evaluation to EPA Headquarters by the due date(s) set forth in the FIFRA Cooperative Agreement Guidance.

Evaluation reports should be consistent with the reporting requirements set forth in the FIFRA Cooperative Agreement Guidance and, generally, include (1) an executive summary (2) whether the project officer agrees or disagrees with the grantee's description of the status and workplan accomplishments; (3) any further details that the project officer wants to include in addition to the accomplishments description provided by the grantee; and (4) project officer's recommendations, if any.

OPP and OECA do not require that mid-year evaluation reports of workplan activities be submitted. However, the EPA region may have its own requirements for grantees to submit mid-year reports and to perform mid-year evaluations. Although EPA Headquarters determined that it does not need a mid-year evaluation report, it views mid-year discussions and/or check-ins as an opportunity for the EPA region and the grantee to assess progress and make any workplan or financial adjustments that may be needed. Therefore, EPA Headquarters recommends informal mid-year discussions with grantees be conducted to assure commitments are on track.

RECORD KEEPING

It is important for the project officer to follow EPA's record management policy and maintain complete and accurate files of the evaluations conducted. Project officers should maintain, as part of the grant file, the following information: dates, locations, attendees, and discussion points for the end-of-year evaluation meetings (opening and closing conferences), feedback of oversight inspections, new state or tribal regulations, inspection file review checklists, case numbers of files reviewed if hard copies of the inspection reports are not kept in the project officer's grant files, case review summary, and program review notes or summary. All grant and other agreement oversight records are to be retained for 10 years after agreement closeout, consistent with the EPA's record retention schedule. Records of file reviews are important to support and monitor any determination of a grantee's ongoing ability to maintain primacy and/or requests to improve any issues found.

PROBLEM RESOLUTION

Project officers need to communicate problems and issues found during the evaluations to the grantee and document those communications and any resolutions. Minor problems may easily be resolved by the project officer or grantee. Major problems, on the other hand, if unresolved, may jeopardize the program. As a first step, the project officer may want to consult with more experienced project officers and his/her manager for advice. It is important that the project officer keep all notes, memos, and forms related to performance problems in the file, starting at the time the problem is identified through resolution.

For a grantee that has performance challenges, the project officer should explain clearly which aspects of performance need to improve and why. If possible, the project officer and grantee should jointly develop a plan for improvement, including specific timelines. Short and long term goals should be set for improvement. The project officer should explain the consequences for not improving performance. Document all agreements for improving performance.

When the project officer perceives a major problem that he/she cannot resolve, it should be elevated to the EPA regional management. Examples of major program problems include not taking appropriate or timely enforcement actions or the inappropriate use of funds. Management will decide if the issue should be elevated further. The problem should be discussed openly to determine its effect on the total program. If the problem cannot be resolved, various remedies are available, which include placing conditions on the agreement, withholding funds, canceling agreements, and withdrawing primacy.

Single audits may disclose accounting problems that will be reported to EPA's Regional Grants Management Offices. Grant specialists work directly with the grantees to correct those problems, but project officers need to be kept informed of those actions. A disputes decision official will issue a determination letter sustaining the audit report and requesting reimbursement for unallowable costs or overpayment. When problems are detected as a result of audits, it is important for the project officer to keep all notes, memos, and forms related to nonperformance issues in the file starting with the time nonperformance is identified through resolution.

APPENDIX 10-1 – SAMPLE INSPECTION/ENFORCEMENT
EVALUATION WORKSHEET

SAMPLE INSPECTION EVALUATION WORKSHEET			
EPA reviewer:		Date of evaluation:	
Grantee:		Grantee inspection number:	
Grantee inspector name:			
Reasons for inspection: (routine or for cause)			
Type of inspection:			
Facility/applicator name:			
Facility type:			
Facility/applicator address:			
Complainant:			
Reason for complaint:			
Date complaint received:		Date inspection initiated:	
Date samples submitted to lab:		Date sample analysis reported:	
Date inspection completed:		Date case closed:	
Summary of the inspection:			
FIFRA violations identified (include legal citation):			
State violations identified:			
Does the inspection file contain the following:			
Narrative Report: Yes/No		Narrative Report Adequate? If not, describe.	
Notice of Inspection: Yes/No		NOI Adequate? If not, describe.	
Inspection Forms: Yes/No		Inspection Forms Adequate? If not, describe.	
Application Records: Yes/No			
Samples: Yes/No	# of Residue:	# of Documentary:	# of Formulation:
Chain of Custody for Samples: Yes/No		Chain of Custody Adequate? If not describe.	
Statements: Yes/No		Comments:	
Photographs: Yes/No		Comments:	
Labels: Yes/No		Comments:	

Drawings/Maps: Yes/No	Comments:
Weather Information: Yes/No	Comments:
Enforcement Decision Evaluation:	
Was an enforcement action taken? Yes/No.	
If no, does the file contain the rationale for that decision?	
If yes:	
Does the file contain the rationale for that decision and the choice of enforcement action?	
Is the enforcement decision consistent with the applicable enforcement response policy/penalty policy? Describe.	
Describe the enforcement action taken, including citation to grantee's statutes/rules:	Was the enforcement action taken in a timely manner? Yes/No
Was injunctive relief required? Yes/No	If yes, was it sought in a timely manner? Yes/No
Was a referral to EPA required? Yes/No	If yes, was it referred in a timely manner?
Does the evidence collected support the enforcement action taken? Yes/No	
Was there any evidence that could/should have been collected to complete the file and/or support the action taken? If yes, describe.	
Does the file contain a penalty calculation sheet that explains how the penalty was derived? Yes/No. If yes, was the explanation adequate?	
Were proposed penalties collected?	
Findings and Issues:	

APPENDIX 10-2 – SAMPLE PEI/MKTPLACE INSPECTION REFERRAL
REVIEW FORM

SAMPLE PEI/MKTPLACE INSPECTION REFERRAL REVIEW FORM			
FIFRA Case Name:	FIFRA Case Number:		
SLA/Tribe:	SLA Inspection Number: _____		
	Inspection Type: MKT <input type="checkbox"/> PEI <input type="checkbox"/>		
Does the case file contain a complete inspection report or narrative?	Y <input type="checkbox"/> N <input type="checkbox"/>		
Does the narrative in the inspection report explain that federal credentials were presented at the beginning of the inspection?	Y <input type="checkbox"/> N <input type="checkbox"/>		
Does the case file contain a Notice of Inspection form?	Y <input type="checkbox"/> N <input type="checkbox"/>		
Is the Notice of Inspection complete?	Y <input type="checkbox"/> N <input type="checkbox"/>		
List each pesticide reviewed during the inspection and referenced in the report, below.			
EPA Reg. No.	1)	2)	3)
Type of Pesticide (e.g. Antimicrobial, Herbicide, Insecticide, Fungicide, Rodenticide, Attempted Min. Risk, etc.)			
For all pesticides reviewed during the inspection does the case file contain the following documentary evidence?			
Full/Complete Label Collected	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Photographs that are clear and legible	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Photographs showing the following:			
a. Front panel of label and pesticide container	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
b. Back panel of label and pesticide container	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
c. Side panels of label and pesticide container	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
d. EPA Reg. No. on label or container	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
e. EPA Est. No. on label or container	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
f. Signal Word on label	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
g. Distributor/Seller/Producer on label	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
h. Batch Number on label or container	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>

Digital Photographs on CD or Flash Drive	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Records of Receipt collected (e.g. identifies when pesticides were received by the company/producer, shows quantity of pesticide received and identifies the seller and buyer, etc.).	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Sales/ Distribution Records collected (e.g. identifies the seller, buyer, quantity of pesticide, date distributed or sold, etc.).	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Statement linking the label collected to the sales/distribution records collected (e.g. the label is representative of the label found affixed to containers distributed or sold by the producer/distributor/seller).	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
If physical sample collected, does the case file contain:			
Chain of Custody	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Results of Analysis	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Records of sale/distribution of batch of product sampled	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Production records of batch of product sampled	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>

Identify other issues with the case file or narrative that should be brought to the SLAs/Tribes attention:

Identify potential violations observed by the inspector and noted in the inspection report:

Project Officer/Technical Contact

Date

Sample Outline for End-of-Year Case Review Evaluations

The following outline may be used to create an end-of-year evaluation narrative of a grantee's enforcement program that project officers may attach to the FIFRA template. The narrative should be based on the case evaluation worksheets and any other pertinent supporting documentation, including but not limited to enforcement response policy, inspection procedures, statutes and regulations.

- 1) Executive Summary
 - a) Highlights of findings and any important points that project officer/technical contact wants to make to the grantee
 - b) One or two examples that support the highlights.
- 2) Introduction

Number and type of inspection and enforcement files reviewed (based on criteria in Chapter 10)
- 3) Results of case evaluations
 - a) Issues from previous year
 - i) Were issues resolved?
 - ii) Steps taken by grantee to resolve issues
 - b) Overview of findings from current fiscal year, include any minor deficiencies found.
- 4) For those inspections with noted violations: Did the grantee follow its own enforcement response policy? If not, why?
 - a) Compare the grantee's enforcement action to its enforcement response policy
 - b) Explain whether the enforcement action fits within the grantee's available enforcement response options and provide specific references to the policy
 - c) Where needed, document communications with the grantee that explain the enforcement response.
- 5) Conclusions/Recommendations

CHAPTER ELEVEN

CONTINUING FROM YEAR TO YEAR

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INTRODUCTION

Oversight of FIFRA cooperative agreements is an ongoing process. FIFRA cooperative agreements are classified as Continuing Program Grants. They can be one to five year cycles, but continue from year to year even if the agreements are on a one-year cycle. The project officer plays a key role in ensuring that these continuing environmental programs are consistent and grow and develop over time. Negotiating the next grant cycle work plan with grantees prior to the start of the next cycle is the responsibility of a project officer and helps to ensure the year to year consistency of FIFRA cooperative agreements.

ENSURING CONTINUITY

PRE-NEGOTIATION STRATEGY

Before the midway point of the current grant year, the project officer should begin to develop a pre-negotiation strategy, which will be used as a starting point for work plan negotiations for the upcoming year. This strategy can be developed from issues identified in the previous year-end report, a mid-year review of the current grant year, new requirements called for in the most recent FIFRA Cooperative Agreement Guidance, EPA regional initiatives, special requests, inspection targets, pending activities, and grantee needs. The strategy can take the form of a written guidance and should also contain estimated funding levels for the upcoming year. This strategy should be sent to the grantee before the negotiation process begins.

NEGOTIATING WITH THE GRANTEE

The negotiation period begins as soon as the grantee receives its pre-negotiation strategy and begins to develop their work plans. Project officers are required to negotiate the elements of the workplan with the grantee, either over the phone or in person, assuring that both parties agree to the commitments set forth in the workplan. Project officers should ensure that all grantee questions have been answered before the workplan is finalized. Grantees should submit the draft work plan to the project officer for review and comment. Project officers should ensure that the work plan meets the requirements of the FIFRA Cooperative Agreement Guidance and targets identified in the pre-negotiation strategy. Once project officers are satisfied with the application, grantees can submit draft applications through the website [Grants.gov](https://www.epa.gov/grants.gov).

Project officers should remind grantees to submit their draft application to the project officer at least 90 days (or other time period set by EPA Regional Grants Management Offices) prior to the proposed date of the award. This requirement allows time for project officers and other EPA regional reviewers to review the draft work plan and provide written comments back to the grantee. The grantee can then amend the

draft and submit the application at least 60 days prior to the proposed award date. Note that regional Grants Management Offices may have earlier deadlines. Check with your grants specialist to find out when applications are due.

Additional adjustments to the work plan may take place during the project period as necessary. This adjustment process is described in Chapter 9.

AMENDING GRANTEE PESTICIDE CERTIFICATION PLANS

Project officers need to review grantee's plan for certification of commercial and private applicators to ensure they reflect current state or tribal conditions. The annual review will be conducted by reviewing the plans in the Certification Plan and Reporting Database (CPARD). Changes in grantee's program may necessitate working with the grantee to amend the certification plan. It is the project officer's responsibility to negotiate changes in state or tribal plans, ensure the state or tribe submits amended plans into CPARD, and facilitate publication of Federal Register Notices if there are major changes to the plans.

For those areas of Indian country where there is no Tribal Certification Plan, the Federal Certification Plan is the primary mechanism for applicators to obtain a certification to apply restricted use pesticides in Indian country. The relevant EPA Region is the primary agency to certify these applicators. In those areas of Indian country where the tribe has an approved Certification Plan, which may be based on the relevant state certification plans, the project officer should ensure that the number of applicators certified by a tribe under these conditions are entered into CPARD.

KEEPING OTHER GRANTEE PLANS CURRENT

The project officer should also ensure the grantee reviews and keeps all other required and voluntary plans current. These may include, but are not limited to, Quality Management Plans, Quality Assurance Project Plans, Priority Setting Plans for Inspections and Investigations, Enforcement Response Policies, and Pollinator Protection Plans. Project officers can enlist other EPA Regional program specialists to participate in the review of these various plans.

NATIONAL STATE AND TRIBAL ORGANIZATIONS

States and tribes have national pesticide organizations that work with EPA to provide valuable input on pesticide policies, registration and national issues such as pollinator protection and worker safety. When possible, project officers should track the issues being discussed by these national organizations to better understand state and tribal issues and concerns and how they relate to their individual grantees.

ASSOCIATION OF AMERICAN PEST CONTROL OFFICIALS

The Association of American Pesticide Control Officials (AAPCO) was formed in 1947, the same year that Congress enacted FIFRA. Members of AAPCO consist of the officers charged by law with the execution of the state, territorial, provincial, and federal laws in the United States,

including all its territories, and in Canada. AAPCO oversees the State FIFRA Issues Research and Evaluation Group (SFIREG) described below. EPA partners with AAPCO via a cooperative agreement to fund SFIREG work which focuses on joint national pesticide priorities.

REGIONAL STATE FIFRA ISSUES RESEARCH AND EVALUATION GROUP

The State FIFRA Issues Research and Evaluation Group (SFIREG) consists of state representatives from each EPA region who identify, analyze, and recommend courses of action to EPA concerning various pesticide concerns. Each Region usually holds two Regional pre-SFIREG meetings during the year which representatives from each grantee attend. State Lead Agency issues are discussed that can be introduced at the national SFIREG meeting. In addition, Regional issues are discussed that may be applicable to future grantee work plans. Project officers should be active participants in these pre-SFIREG meetings to understand grantee issues and concerns. Project officers should encourage states to be actively involved in those meetings and exchange information about state pesticide issues.

In addition, because regions can participate at national SFIREG meetings, active participation at the regional level by the project officer strengthens the process. The process also allows the project officer to be informed of the regional SFIREG position on various issues and inform EPA Headquarters of proposed action items.

ASSOCIATION OF STRUCTURAL PEST CONTROL REGULATORY OFFICIALS

The Association of Structural Pest Control Regulatory Officials (ASPCRO) is a professional association comprised of the structural pest control regulatory officials of any of the fifty states. The goal of the organization is to promote better understanding and efficiency in the administration of laws and other written documents of regulatory authority between states concerning the control and eradication of pests of structures and their immediate environments. In addition, the organization promotes the protection of the human health and the environment against the misuse of pesticides, and advocates a more professional standard for the structural pest control industry. ASPRCRO works with EPA on national pesticide issues of joint importance and concern.

TRIBAL PESTICIDE PROGRAM COUNCIL

The Tribal Pesticide Program Council (TPPC) is a network of tribal representatives and intertribal consortia, focused on tribal pesticide issues and/or pesticide program development and education. The purposes of the TPPC are: (1) to identify, analyze, and provide tribal comments to EPA, OECA, OPP, tribal pesticide programs, and other tribal, state, and federal programs, as appropriate, on matters relating to pesticide registration, enforcement, training, certification, water quality, disposal, and other areas of environmental concern related to pesticide manufacture, use, and disposal; (2) to strengthen and be a technical resource for tribal pesticide programs where they already exist; and (3) to assist tribes who do not have pesticide programs in assessing whether they need to establish, develop, and implement a pesticide program and (a) if so, how to do that or (b) if not, how to get any pesticide issues they may have resolved.

The project officer should know the TPPC representatives for his/her region and participate in the Regional

Tribal Operations Council (RTOC) meetings when possible. Project officers should also become familiar with the tribal coordinators for OPP and OECA, and participate, in regional tribal calls. Tribes should be encouraged to be actively involved with RTOC meetings as well, and participate in pre-SFIREG meetings when possible. In fact, project officers should promote state and tribal interaction when possible and as appropriate.