

ENFORCEMENT PRIORITY-SETTING GUIDANCE

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

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

I. CONTENT

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

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

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

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

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

Appendix 5

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

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

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

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

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

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

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

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

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

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

II. Format

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

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

Priority Areas - For each priority, address the following:

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