



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Update revisions to the FY2008—2010 Pesticide Program Cooperative Agreement Guidance for FY2009

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**TO:** Regional Pesticide Supervisors

Attached are the FY 09 amendments to the FY 2008-2010 Pesticide Program Cooperative Agreement Guidance for the areas of water quality, container/containment and appendices 3a and 6. For reference, OECA has uploaded the 2008-2010 Cooperative Agreement Guidance, and associated appendices on the web at:

<http://www.epa.gov/compliance/state/grants/fifra.html>

**Water Quality**

In the section *Water Quality – Reporting Requirements (Section 2.2.2, page 19)* where it states how Pesticide lead agencies must report on activities conducted under the Cooperative Agreement related to water quality, the following revision (in blue) has been made.

1. Pesticide lead agencies must report on the national water quality measures that were developed as an outcome of the 2004 OMB PART analysis. **This information should be reported using the Pesticides of Interest Tracking System (POINTS), along with the submission of data sets of any monitoring results acquired through the grant,** if available and properly analyzed and formatted.

Because of this change, Appendix 9, which OPP had planned to develop as an end of year reporting tool, and which was referenced in the Water Quality reporting requirements of the 2008-2010 guidance, is no longer necessary and will therefore be removed.

## Container/Containment

### Excerpt from Section 2.2.2. Levels of Program Attainment

#### **Pesticide Container and Containment Regulations**

EPA published a final rule on Standards for Pesticide Containers and Containment Structures on August 16, 2006. There are only three activities related to this rule that States should conduct during FY 2008-2010. Only the third activity applies to Tribes.

- 1. Adequate Programs to Ensure Compliance with the Residue Removal Requirements.** Each State should review the container and containment regulations and demonstrate that the State can carry out an adequate program to ensure compliance with the residue removal requirements in the rule. Unless EPA determines by August 16, 2008 that a state is carrying out an adequate program, FIFRA Section 19(f)(2) provides that the State may not exercise primary enforcement responsibility under Section 26 or certify an applicator under Section 11. This activity only applies to the subset of the container-containment regulations that deals with cleaning containers (i.e., residue removal) and does not include the containment requirements. More information on this activity is provided in section 3.1.2 of this guidance (Section 19(f) Compliance and Enforcement Activities). EPA has delegated the determination of State adequacy under Section 19(f)(2) to the Regional Offices. In order to give Regions sufficient time to make these determinations, States should have provided their submissions of adequacy to their Regional EPA Office by January 16, 2008.
- 2. States with Existing Containment Regulations.** States that promulgated containment regulations prior to August 16, 2006 have the option of continuing to implement their own programs in lieu of the federal containment requirements. A total of 21 States that had containment regulations submitted timely requests (by August 16, 2007) for the authority to continue to implement their State containment regulations, by submitting a letter and supporting documentation to EPA. The supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to that expected to be provided by the federal regulations. The State and EPA will be discussing the information in FY 2008 as EPA determines whether or not the State regulations provide equivalent environmental protection. EPA anticipates making these determinations during the second quarter of the 2008 calendar year. This activity only applies to States that had containment regulations by August 16, 2006.<sup>1</sup>
- 3. Conduct Outreach and Education.** States/Tribes should provide container and containment-related outreach and education to the regulated community. By August 16, 2009, pesticide registrants must comply with the nonrefillable container regulations. Also by this date, retailers, commercial applicators and custom blenders must comply with the containment regulations. EPA is in the process of revising the regulations for labeling and extending the compliance date for the labeling provisions until 2010. By August 16, 2011, registrants and refillers (which could be registrants, distributors, retailers or other entities) must comply with the refillable container and

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<sup>1</sup> EPA (Headquarters and the Regions) will work with the States and Tribes that do not have containment regulations to determine how the federal containment regulations will be implemented by August 17, 2009.

repackaging requirements. EPA headquarters will develop fact sheets, standard presentations, how-to-comply guidance (including compliance checklists) and Q&As for States and Tribes to distribute. In addition, EPA Headquarters will develop a compliance strategy, which is discussed in section 3.1.2 of this guidance (Section 19(f) Compliance and Enforcement Activities). Outreach efforts should focus on providing information to covered businesses to ensure that they are aware of the requirements and to facilitate compliance.

### **Form 5700-49**

In addition to the above revisions, Region 7 has informed us, as was pointed out by their grants office that EPA Form 5700-49: Certification Regarding Debarment, Suspension, and Other Responsibility Matters, which is part of the 2008-2010 Guidance is not needed anymore because debarment has been codified in 40 CFR Part 32. They state that the Grants office now places an Administrative Condition on the grant agreement and the recipient agrees to the debarment requirements by signing the agreement. Below is the condition now placed on all original agreements:

Recipient agrees to fully comply with Subpart C of 40 CFR Part 32, entitled “Responsibilities of Participants Regarding Transactions.” Recipient must ensure that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. Recipient agrees to include a similar term or condition in any subsequent lower tier covered transactions. Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov).

Regions and state, territorial and tribal applicants should use this Guidance in negotiating cooperative agreements for FY 2009. As in the past, cooperative agreements should address the national priorities which are identified in the Guidance.

### **Revised Appendices 3a and 6**

OECA revised Appendixes 3a and 6. Appendix 3a was revised by moving the sentence “Inspection reports of all inspections conducted using EPA credentials must be forwarded to EPA.” from Section G -- Enforcement Action Category Definitions; 9 Cases referred to EPA for Action to Section D -- Inspection Category Definitions. This issue was originally identified by the PART Workgroup last summer. The change means that only those cases “referred to EPA” which are associated with an inspection which detected violations should be counted for PART reporting purposes. Note, however, that all inspections using EPA credentials must be forwarded to EPA. Appendix 6 (Enforcement Part Measures) was revised last September. You should use the revised version. Both revised appendices are attached.

If you have any questions regarding these changes, please contact Dan at 703-308-8054 or Al at 202-564-4147.

Attachments

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