

**WORKER PROTECTION STANDARD
Program Review
Final Report**

October 2005

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Worker Protection Standard Program Review Final Report

Executive Summary

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the primary statute under which the United States Environmental Protection Agency (EPA) regulates pesticides, provides the legal basis for implementation of the Worker Protection Standard (WPS) program (40 CFR Part 170). Unlike most of EPA's programs that protect the general population, the WPS was specifically intended to protect agricultural field workers and pesticide handlers from the risk of detrimental exposure to pesticides. This population is at risk because it works with and in proximity to these chemicals or in fields where the chemicals have been applied. These employees often are minorities who do not speak or read English and may not be U.S. citizens. Many are not familiar with their rights under the WPS or other labor standards.

The WPS regulation requires that agricultural employers take specific measures, such as providing pesticide safety training, personal protective equipment (PPE), and pesticide application information to workers and pesticide handlers, to minimize occupational exposure to pesticides. In conjunction with the WPS, the Agency issued regulations requiring pesticide registrants to incorporate specific WPS language on labels of pesticides that fell under the WPS (40 CFR Part 156). From April 1993 through April 1994, EPA focused WPS compliance monitoring efforts by working with state partners to ensure that agricultural pesticides were labeled in compliance with WPS labeling requirements. Early agricultural use inspections consisted primarily of providing compliance assistance to the regulated community on the provisions of the WPS. Starting in 1997, EPA cooperative agreement grant guidance emphasized a shift from compliance assistance to enforcement follow-up as it related to agricultural use inspections.

Purpose of the National Worker Protection Standard Program Review

Initially referred to as the Program Element Review, the WPS Program Review had two main goals. The first goal was to assess the effectiveness of EPA headquarters, regional offices and state efforts to ensure compliance with WPS provisions that protect workers who handle, prepare, and apply pesticides in the field or who work in fields, forests, nurseries or greenhouses where pesticides are applied. Second, the WPS Program Review was to assess the implementation of the WPS program and to determine what steps could be taken to improve the efficiency and effectiveness of the program in protecting workers and handlers. The review focused on EPA headquarters, regional and state implementation of the enforcement and compliance components of the FIFRA Worker Protection Standard. The field work for the WPS Program Review was conducted during FY2001 by the staff of the Office of Enforcement and Compliance Assurance (OECA), both headquarters and regional, collaboratively with the Office of Pesticide Programs (OPP) staff and state co-regulators.

The selection of the Worker Protection Standard program for review was prompted by two key events. First, in May 1998, the Children's Health Protection Advisory Committee (CHPAC) recommended that the EPA Administrator review the WPS regulation to assure that it adequately accounted for the risk to children from exposure to pesticides. Second, in March 2000, the General Accounting Office (GAO) issued a final report titled, "Pesticides: Improvements Needed to Ensure the Safety of Farm Workers and Their Children," (GAO/RCED-00-40). Based on findings discussed in its report, the GAO recommended that EPA take actions to improve its oversight of the states' implementation and enforcement of the WPS.

The Pesticide Worker Safety Program Assessment

Separate from this review, the Office of Pesticides Programs (OPP) conducted a series of WPS National Assessment Workshops. The intent of these workshops was to gain stakeholder input on the strengths and weaknesses of the WPS regulation and its implementation. These discussions, particularly the thoughts and concerns expressed by states, farm worker advocates and growers about EPA and state implementation of the WPS enforcement and compliance provisions, were considered in this report. Even though the National Worker Safety Assessment, issued by OPP on May 11, 2005, and this compliance and enforcement program review followed very different processes, many of the recommendations in the national assessment mirrored recommendations that resulted from OECA's internal compliance and enforcement review.

Findings and Recommendations

The findings and recommendations of the WPS Program Review pointed to seven major areas that needed attention in order to promote more nationally consistent program direction and implementation of the WPS program. The seven areas include:

1. **A Clear Strategic Vision**
Clear program goals, strategic planning, and updated guidance and policies would provide uniform direction that would help to improve implementation and ensure consistency in performance and oversight across regions and states.
2. **Improved Accountability at All Levels**
The cooperative agreement process needs to be strengthened and fully utilized by EPA headquarters, regions and the states as the management tool it was designed to be.
3. **Better Communications Between EPA and States and With Workers and Growers**
Frequent and regular communication between co-regulators would assure common understanding and the achievement of program goals. Outreach to the regulated community and to worker advocacy groups needs to be improved.
4. **Training for Co-Regulators to Enhance Implementation**
Training for FIFRA project officers, WPS coordinators and inspectors at both the federal and state level would improve oversight, enforcement program implementation and performance in the field.

5. **Better Information for Measuring the Success of the Program** EPA should augment the information it collects concerning WPS program implementation to enable adequate assessment of program performance.
6. **The Level of and the Utilization of Resources Are Issues**
Regions have difficulties carrying out their direct implementation of the WPS program in Indian country and in states without primacy due to limited staff and travel funds. This review was not successful in gathering adequate information concerning WPS funding at the state level. Regardless, better use of allocated funds at all levels would enhance the effectiveness of the program.
7. **Strengthen Implementation at All Levels**
Certain inspection issues need to be addressed, such as: interviewing workers and handlers who do not speak English; timing agricultural use inspections to coincide with application events so that WPS issues can be evaluated; and conducting follow-up inspections at sites with previously identified violations. EPA needs to encourage the shift from compliance assistance to enforcement in its guidance and oversight. Working toward tribal governments' control of the program should be explored more fully.

Conclusion and Implementation of Recommendations

The important steps OECA already has taken to address the review findings and recommendations identified are outlined in this report. These steps include participating in WPS National Assessment Workshops; updating the Pesticides Cooperative Agreement Guidance; instituting senior-level meetings between headquarters program and enforcement offices; developing materials and conducting training for project officers, attorneys and inspectors; working with EPA regions and states to gather additional data on inspections and enforcement actions; developing guidance on targeting WPS inspections and performing more nationally consistent and thorough agricultural-use inspections; and providing worker interviewing techniques and tools.

Many of these actions, on their own, directly address the recommendations in this report. For all recommendations, however, there will be ongoing efforts to make continuous improvements in the WPS program in the areas identified in this report. These efforts include addressing compliance and enforcement related recommendations made through OPP's national worker safety assessment. One of the first steps taken to further address the recommendations was the development, with our state and tribal partners, of a joint strategy and action plan to address the future direction of the WPS compliance and enforcement program.

INTRODUCTION

This report is the culmination of an extensive review of the implementation of the enforcement and compliance components of the Federal Worker Protection Standard (WPS) regulation, 40 CFR Part 170, promulgated pursuant to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 25, 7 U.S.C. §136w. The Office of Enforcement and Compliance Assurance (OECA), the Office of Pesticide Programs (OPP) and the EPA regions, with significant assistance from the states, began the review in FY 2001. This report captures the findings and recommendations for improvement of the WPS enforcement and compliance program, and outlines steps that have already been taken since then to address the issues identified. This report should be read in conjunction with OPP's Worker Safety Assessment Report (May 2005). Although the OECA review and the OPP assessment used different processes to evaluate the needs of the worker safety program, the recommendations for compliance and enforcement significantly overlap.

BACKGROUND

The FIFRA Implementation Scheme

EPA regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. § 136 et seq.), and the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA). EPA registers pesticide products for specified uses before they may be sold or distributed, specifies terms and conditions of their use prior to being marketed, and removes unreasonably hazardous pesticides from the marketplace. Under FIFRA, more stringent (non-label) state laws and regulations are permissible. In 1978, FIFRA amendments established the presumption that states and territories, excluding Indian tribes, under certain circumstances shall have primary responsibility, or primacy, for bringing enforcement actions against violators of pesticide use requirements found on pesticide labels. Today, all but one state, Wyoming, has primacy, and one state, Colorado, has primacy for commercial applicators only. In most states, the WPS program is operated out of the states' department of agriculture, though in two states the program is located in the department of labor as an occupational health and safety program, and in a few remaining states it is located in an environmental protection department. All states with primacy also have cooperative grant agreements with EPA, although primacy without grants is possible. Unlike other major environmental statutes where EPA retains authority to enforce requirements of a state's approved program, where states have primacy under FIFRA, EPA has limited ability to inspect or take enforcement actions for use violations.

The FIFRA Worker Protection Standard

EPA revised its Worker Protection Standard issued under FIFRA in August 1992 to reduce risks of illness or injury resulting from worker pesticide exposure in agricultural

production. Due to Congressional action, full implementation of WPS was delayed until 1995 to give EPA more time to provide compliance assistance to agricultural employers before compliance monitoring began. The scope of the regulation includes not only workers performing hand labor operations in fields treated with pesticides, but also workers in forests, nurseries and greenhouses, and employees who handle (mix, load, apply, etc.) pesticides in these locations. The WPS requires warnings about applications, use of personal protective equipment (PPE), and restrictions on entry to treated areas. The requirements of the WPS regulation¹ are implemented as label requirements. Violations of the label requirements are thus use violations, subject to state primacy for enforcement response. Early WPS agricultural use inspections consisted primarily of providing the regulated community compliance assistance on the provisions of the WPS. As stated earlier, starting in 1997, EPA cooperative agreement guidance emphasized a shift from compliance assistance to enforcement.

Roles and Responsibilities

Under the FIFRA implementation scheme, states have primary responsibility - primacy - for bringing enforcement actions against violators of pesticide use requirements found on pesticide labels. EPA regions have direct implementation responsibilities where a state does not have primacy, as well as in Indian country. Other EPA organizations have less direct responsibilities.

EPA headquarters's roles and responsibilities are to:

- Identify national program priorities and directions.
- Prepare national cooperative agreement grant guidance, including program priorities, and notification to regions of funds available for implementing and managing the pesticides cooperative agreement program.

¹ Key provisions of the WPS regulations are:

Protection during applications: Applicators are prohibited from applying a pesticide in a way that will expose workers or other persons. Workers are excluded from areas while pesticides are being applied.

Restricted-entry intervals: Restricted-entry intervals must be specified on all agricultural plant pesticide product labels. Workers are excluded from entering a pesticide treated area during the restricted entry interval, with only narrow exceptions.

Use of personal protective equipment: Personal protective equipment must be provided and maintained for handlers and early-entry workers.

Notification of workers: Workers must be notified about treated areas so they may avoid inadvertent exposures.

Decontamination supplies: Handlers and workers must have an ample supply of water, soap, and towels for routine washing and emergency decontamination.

Emergency assistance: Transportation must be made available to a medical care facility if a worker or handler may have been poisoned or injured. Information must be provided about the pesticide to which the person may have been exposed.

Pesticide safety training and safety posters: Training is required for all workers and handlers, and a pesticide safety poster must be displayed.

- Provide support, as requested, for grants administration and technical training to regions.
- Develop national compliance monitoring strategies for significant regulatory decisions and actions, in consultation with the regions.
- Develop guidance for appropriate enforcement responses and penalty policies to ensure fair and consistent approaches with industry.
- Oversee federal enforcement.
- Provide national oversight and evaluation of the program, to include periodic assessment of the cooperative agreement grant program using year-end reports and other information.

Two EPA headquarters offices carry most of the Agency's responsibilities for national implementation of the WPS. The Office of Pesticide Programs (OPP) in the Office of Prevention, Pesticides and Toxic Substances is responsible for the programmatic aspects of the WPS program, including regulation development, national programmatic guidance and policy, worker and handler training, compliance assistance materials, and applicator certification. The Office of Enforcement and Compliance Assurance (OECA) is responsible for the enforcement and compliance aspects of the WPS program, including compliance monitoring, enforcement, and, along with OPP, compliance assistance. The Office of Compliance (OC) within OECA is responsible for implementing the FIFRA Enforcement State and Tribal Assistance Grants (STAG) by providing the regions with grant guidance and for implementing FIFRA compliance assistance and monitoring programs through development and issuance of national policies and guidance. The Office of Civil Enforcement (OCE) within OECA works in partnership with the regional offices in ensuring implementation of the enforcement component of the WPS program. OCE works closely with inspectors, case development officers, and attorneys with interpreting the statute and regulations, case development consultation, penalty assessments, enforcement case reviews, referrals for nationally significant cases, and analyzing end-of-year WPS case reviews.

Regional roles and responsibilities include:

- Provide state, tribal, and territorial applicants with annual cooperative agreement guidance, regional priorities and the application criteria to be used in awarding cooperative agreements; notify eligible states, tribes, and territories of the availability of funds.
- Work closely with the states, tribes and territories to develop complementary programs that consider available resources.
- Negotiate program measures, including outcome and output measures, and activities with applicants.
- Provide copies of national compliance monitoring strategies to the states, tribes, and territories.
- Facilitate the meeting of training needs of state, tribal, and territorial personnel, as appropriate.
- Provide oversight and guidance to state, tribal and territorial programs; conduct

mid-year and end-of-year cooperative agreement evaluations as described in the cooperative agreement guidance.

- Provide headquarters with state, tribal and territorial cooperative agreement program information including copies of end-of-year evaluation reports, a fiscal year report of final allocations to the states, tribes, and territories, and other information, as needed.²

Federal Guidance at the time of the Review for Implementing the WPS

The WPS was a significant expansion of pesticide label use requirements and, to be fully implemented, required a shift in approach for agricultural-use inspections from primarily complaint-driven to routine, planned inspections. To accomplish these changes, EPA issued a wide array of WPS-specific guidance and developed new compliance tools, described below. All the outreach/education, compliance assistance, and training accumulatively represented substantial staffing, funding, and investment in one of the most extensive and proactive efforts ever by EPA to ensure compliance and enforcement with a pesticide regulatory program. These WPS-specific guidance and tools supplemented general FIFRA implementation guidance (*see Attachment B*).

- **Policy:** The 1993 WPS Compliance Monitoring Strategy was designed to incorporate compliance assistance along with the traditional compliance monitoring/enforcement activities. The intent of the WPS strategy was to strike a balance between activities used to correct and deter violations (i.e., inspections and enforcement actions) and activities and tools used to prevent violations from occurring (i.e., guidance, training, outreach and compliance assistance).
- **Pesticide Cooperative Agreement Guidance:** This guidance, which began incorporating WPS activities in FY 1993, directed states and tribes to develop their own state-specific WPS monitoring strategies using the WPS Compliance Strategy, above, as a model and update them periodically to deal with evolving WPS issues. Regions were to develop strategies for states in which the EPA region enforced the program.
- **Enforcement Response Policy:** The Office of Civil Enforcement issued the “Interim Final Penalty Policy for the FIFRA Worker Protection Standard” in 1997. The document is an appendix to the 1990 FIFRA Enforcement Response Policy. The WPS Penalty Policy provided guidance on the appropriate response to specific FIFRA WPS misbranding and misuse violations.
- **Inspection guidance:** The 1994 Worker Protection Inspection Guidance Manual, which included checklists to assist states and tribes in conducting thorough inspections; the WPS Use and Product Enforcement Courses (Instructor and Student Modules); and the

² See memorandum entitled “Needs and Roles of the Office of Compliance Monitoring and the Regional Offices in the Cooperative Agreement Process”, dated March 31, 1993.

WPS Field Inspection Pocket Guide all provided in-depth information about the requirements of the WPS and guidance on conducting WPS inspections. The WPS Inspection Pocket Guide was later revised to address amendments to the WPS.

- **Training:** EPA has been sponsoring Pesticide Inspector Residential Training (PIRT) since 1994 to provide national training to state and tribal and territorial inspectors. In addition, OECA participates in the Pesticide Regulatory Education Program (PREP) funded by OECA and OPP for pesticide managers, which often includes WPS issues. Regions also have conducted training for their state inspectors.
- **How-to-Comply Manual:** A critical goal in implementing the WPS was to notify affected pesticides users, primarily employers of agricultural workers and pesticide handlers, of the existence of the WPS and what they must do to comply with the standard. OPP published this unique guide to compliance in 1993. (It remains the most frequently requested compliance assistance item through the EPA National Agriculture Compliance Assistance Center.)
- **WPS Interpretive Policy Qs and As:** In 1994 and again in 1996, EPA published answers to hundreds of questions asked by the public and state regulators about WPS to provide uniform, official interpretations of the regulatory provisions and the intent behind specific language.

Goals in Reviewing the WPS Enforcement and Compliance Program

The selection of the WPS program for review was informed by two key events. First, in May 1998, the Children's Health Protection Advisory Committee (CHPAC), a body of specialists who advise EPA on regulations, research, and communication issues relevant to children, recommended that the EPA Administrator review the WPS regulation to assure that it adequately accounted for the risk to children from exposure to pesticides. The Administrator responded by proposing that EPA conduct a “national assessment of implementation of the WPS.”

Secondly, in March 2000, the General Accounting Office issued a final report titled, "Pesticides: Improvements Needed to Ensure the Safety of Farm Workers and Their Children" (GAO/RCED-00-40). Based on findings discussed in its report, the GAO recommended that EPA take several actions to improve its oversight of states' implementation and enforcement of the WPS.³ In its response to the final GAO report, EPA committed OECA to conducting a

³ The GAO's recommendations for improvement to WPS enforcement and compliance were:

1. clearly define what constitutes a worker protection inspection for the purposes of the cooperative agreement;
2. establish goals for the minimum number of worker protection inspections that states should conduct annually under their cooperative agreements;
3. examine whether the resources states dedicate for this function under the cooperative agreements are adequate to achieve the goals established;
4. clarify the roles and responsibilities of EPA's regional offices to ensure consistency in their

review of WPS compliance and enforcement at both the federal and state levels. This review fulfills the commitments of the Agency in response to the CHPAC's recommendations and the GAO report to review WPS enforcement and compliance.

In addition, the National Environmental Justice Advisory Council (NEJAC), in a letter to the EPA Administrator dated June 3, 1997, raised concerns that states may not be rigorously enforcing their farm worker protection laws. Finally, other reports and studies issued by farm worker advocacy groups and academic institutions have raised concerns about the welfare of farm workers and implementation of the WPS. These reports raised issues regarding both state implementation and EPA oversight efforts (*see Attachment D*).

The goal of the WPS Program Review was to assess the effectiveness of EPA headquarters, regional offices, and state efforts to ensure compliance with WPS provisions that protect workers who handle, prepare, and apply pesticides in the field or who work in fields where pesticides are applied. Ultimately, the review was to assess the implementation of the WPS program, and to determine what steps could be taken to improve the efficiency and effectiveness of the program in protecting workers and handlers.

The Pesticide Worker Safety Assessment

Separate from this review, OPP conducted a series of WPS National Assessment Workshops. The intent of these workshops was to gain stakeholder input on the strengths and weaknesses of the WPS regulation and its implementation, as well as to possibly revise the regulation to ultimately achieve improved protection of agricultural employees from pesticides while also simplifying employer compliance. The workshops were held in FY2000 - FY2003 in Austin, Texas; Sacramento, California; Orlando, Florida, and Washington, D.C., and included discussions of WPS enforcement and compliance matters. These discussions, particularly the thoughts and concerns expressed by state regulators, farm worker advocates and growers about EPA and state implementation of the WPS enforcement and compliance provisions, were considered in this report. OPP issued its report of the stakeholder assessment process on May 11, 2005. Even though the national assessment and this compliance and enforcement program review followed very different processes, many of the recommendations made by the diverse set of stakeholders in the national assessment mirrored recommendations that resulted from OECA's internal compliance and enforcement review.

Regulatory Focus of the WPS Program Review

This review was led by OECA, with assistance from the EPA regions, states and OPP. Although this review examined all components of an integrated enforcement and compliance

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5. oversight of the program; and
take the necessary steps to obtain and analyze data on the results of the states' worker protection inspections, including the number and types of actions taken in response to worker protection violations.

assurance program, special emphasis was placed on implementation of the enforcement and compliance monitoring components of the program.

This review examined the programmatic aspects of the WPS program (e.g., worker training, outreach, and communication) only to the extent necessary to inform the review team of enforcement and compliance matters. In addition, the review did not focus on compliance with or enforcement of the WPS labeling requirement (40 CFR Part 156), which mandated that agricultural-use pesticide labels attached to the pesticide containers contain the worker protection provisions. The commitment from the Administrator to assess the program focused on the “use” side of the regulation (40 CFR Part 170), i.e., the actual employment of and potential exposure to pesticides, not the correct labeling of the products. The GAO Report also focused exclusively on the “use” side of the WPS.⁴

Assuring compliance with label “use” requirements is the responsibility of those states with primary authority for pesticide use violations.⁵ In states with primacy under FIFRA, pursuant to the statute, EPA has very limited ability to take direct enforcement action or conduct inspections for WPS-use violations. The review, therefore, focused on the state/federal partnership for assuring compliance with the WPS use requirements, including in those states without primacy.

PROGRAM REVIEW METHODOLOGY

The review examined the WPS compliance and enforcement program at all levels: EPA, both OECA and the regions, and, where applicable, states. The review was undertaken by a team of headquarters, regional and state personnel who examined relevant documentation on program performance and conducted on-site, in-depth discussions with EPA managers and staff responsible for program implementation. The regions, with state assistance where practicable, examined implementation of the program at the state level. This report is the product of that review. Further details on the process used in undertaking this review are provided in *Attachment A*. Data from the regional review of states are included in *Attachment C*. Participants in the review are listed in *Attachment E*.

⁴ However, in 1999-2000, EPA and states examined the WPS language on over 200 pesticide product labels for deficiencies or discrepancies with product registration.

⁵ All states but one (Wyoming) have primacy for FIFRA (including WPS); one state (Colorado) has primacy only for commercial applicators.

FINDINGS, CONCLUSIONS, RECOMMENDATIONS, AND PROGRESS SINCE THE REVIEW

In the years prior to this review, EPA regions and most states made substantial progress in implementing the Worker Protection Standard. The regulation established a new pesticide regulatory program. Only a few states had an existing program. All states, and several tribes, submitted State Implementation Plans (SIPs) to EPA in the 1993-1995 time frame and, in accordance with EPA guidance and the SIPs, commenced the implementation of the WPS program through training, outreach and compliance assistance. These preliminary outreach efforts were necessary to introduce both growers and workers to the new regulation, and to give them an opportunity to become familiar and come into compliance with the requirements of the new regulation.

Beginning in 1997, OECA, through the national Pesticide Cooperative Agreement Guidance, indicated that, from a national perspective, the period for focusing primarily on outreach and compliance assistance was ending and that states should focus their work on enforcement efforts. It was EPA's view then that enough time had passed and that EPA and the states had provided adequate levels of outreach and compliance assistance for the regulated community to be aware of and in compliance with the WPS. The Pesticide Cooperative Agreement Guidance directed the states to shift their focus from outreach and compliance assistance to compliance inspections and enforcement. This change was generally slow in occurring and the cooperative agreement process, which should have provided the primary mechanism to promote this shift, had not been utilized effectively.

The review identified seven areas needing attention. Not all states or regions were at the same level of implementation and the review was not designed to evaluate these individual state or regional differences. These seven areas, however, would promote more consistent program direction and implementation state-to-state and EPA region-to-EPA region, and would help to bring about the shift from assistance to enforcement. These areas and specific recommendations for achieving the desired program improvement are provided below, followed by information on progress that has occurred since the review in addressing the recommendations.

Finding Area No. 1. A Clear Strategic Vision

Clear program goals, strategic planning, and updated guidance and policies would provide uniform direction that would help to improve implementation and ensure consistency in performance and oversight across EPA regions and states.

1.1 The WPS Program Would Benefit from an Improved Strategic Planning Mechanism

Findings and Conclusions: Planning in the program for several years prior to the review was done through the cooperative agreement process. Cooperative agreements are plans for how states, tribes and territories will use the annual grant monies provided by EPA.

These plans did not provide an effective, long-range strategic planning mechanism for the WPS program. Planning has also occurred through the State Implementation Plans (SIPs). Guidance for the content of the SIPs was set out through the Pesticide Compliance Monitoring Strategy (March 9, 1993), the annual national cooperative agreement guidance, and related supplemental regional guidance. The content of the SIPs should have also been directed from commitments in the cooperative agreement itself and the results and findings from the state accomplishment reports and the regions' mid- and end-of-year evaluations of the states. Both of these mechanisms—the annual cooperative agreement process and the SIPs— were not used effectively to guide the program over time. Despite annual directives from OECA in the cooperative agreement guidance to update the SIPs as necessary, few regions or states had undertaken this task and the SIPs were largely unused, historical documents. Almost universally, the regions agreed that the SIPs were useful in the initial phases of the program, but were no longer consulted or used as program guidance. The disuse of the SIPs was not communicated to OECA, despite the annual directive in the cooperative agreement guidance to update them as necessary, demonstrating a need for more open communication between regions and headquarters.

Recommendation: EPA should enhance its strategic planning for the WPS program. It may be helpful to develop a longer-term vision for the WPS program than the current cooperative agreement process can provide. OECA and OPP jointly should set program priorities and direction and include them in the cooperative agreement guidance. The guidance should also include a roadmap, with milestones, for achieving program goals within the priority areas. These plans should be the basis for decisions about resource utilization and inspection targeting. Many tools or approaches could be part of this roadmap, but with a unified strategic goal guiding those activities. For example, one region employed a negotiated “compliance monitoring strategy” that set out their states’ plans for conducting compliance and enforcement program activities as an alternative to the cooperative agreement work plan. All states in this region included WPS inspection targeting in this mechanism. While this deals with only one aspect of the WPS program, these types of strategies applied to national goals could be useful tools in building a broader and longer-term approach to planning, while effectuating a more nationally consistent compliance and enforcement program .

1.2 Provision of Key Compliance and Enforcement Documents Will Improve Implementation of the WPS Program

Findings and Conclusions: Key WPS compliance/enforcement tools had not been developed or had not been updated by OECA or OPP, including key guidance documents, compliance assistance materials and enforcement tools. These documents and tools would help to promote consistency from region-to- region and state-to-state.

Recommendation: OECA should work with OPP to develop the compliance assistance and new worker interviewing materials requested by the regions and states. The

activities that need to be undertaken to produce the critical tools or policies identified by EPA regions and the states are:

- reactivate the WPS Interpretive Guidance Workgroup (IGW);
- revise the WPS How-to-Comply Manual
- develop “How-to” guidance on interviewing field workers.

Progress Since the Review

- **Pesticide Cooperative Agreement (CA) Guidance:** The CA Guidance was updated jointly by OECA and OPP in July 2001. This guidance included: 1) definition of what constitutes a worker protection inspection; 2) factors to consider to determine the minimum annual number of worker protection inspections to be conducted by the states; 3) additional guidance for regional oversight of the cooperative agreements, including consideration of the adequacy of dedicated grantee resources when evaluating grantee performance; and 4) new reporting requirements specific to WPS-related compliance and enforcement activities. Regions were also given guidance on how to conduct more consistent grant management and oversight, including the importance of fostering the channels of communication between worker advocacy groups, growers, migrant health clinics, and state agencies.

The latest Pesticide Cooperative Agreement Guidance, for FY 2005 - 2007 (www.epa.gov/compliance/state/grants/fifra.html), continues the program improvements and adopts more comprehensive reporting requirements to develop information on the most commonly violated WPS provisions. These data will help improve state inspection targeting and focus training needs. Also, the current guidance is a three-year document, allowing for a longer-term, more cost-effective WPS planning process between regions and states.

- **Senior Management Meetings:** In January 2002, OPP and OECA began holding monthly senior management meetings to discuss FIFRA/WPS priorities, strategies and issues. These discussions are shared with the regions and states at periodic program and enforcement meetings.
- **WPS Interpretive Guidance Workgroup (IGW):** The IGW was created to provide uniform, official interpretations of the regulatory provisions and the intent behind specific language. In 1994 and 1996, EPA published the Workgroup’s answers to hundreds of questions asked by the public and government officials after the WPS was issued. The IGW was reactivated in FY2002, resulting in the 2004 release of an additional four interpretative questions and answers. The IGW was again revitalized in early 2005 under a new broader workgroup of interested stakeholders and is now in the process of

addressing another 19 new interpretative questions. All interpretations are posted on the EPA National Agriculture Compliance Assistance Center web site (<http://www.epa.gov/agriculture>).

- **How to Comply (HTC) Manual:** The old version of the, "*How To Comply Manual, What Employees Need To Know*," dated Feb. 24, 1994, did not reflect certain later amendments to the regulation. Under Office of Compliance lead, the manual has been revised and will be published in 2005. In the view of many state pesticide regulators, the HTC Manual continues to be a very important tool, perhaps the most important, for employers to use in achieving compliance.
- **National Assessment Workshops:** These Office of Pesticide Programs-led workshops continued beyond the period of the review and included representatives from OECA, regions and states. Discussions included strategic direction for WPS compliance and enforcement. Assessment discussions were considered in the review and in follow-up activity. The final report of these National Assessments was published May 11, 2005.
- **WPS Routine Agricultural-Use Inspection Guidance:** A specific section of this July 2001 guidance is dedicated to the content of worker and handler interviews. This guidance was again revised in 2004, (www.epa.gov/compliance/resources/publications/monitoring/fifra/manuals/wps/index.html). The revised guidance further clarifies that interviews are a required part of a WPS-use inspection and provides tips for conducting worker interviews. To ensure implementation of the guidance, EPA provided 'train-the-trainer' sessions for inspectors through the Pesticide Inspector Residential Training (PIRT) program. The goal of the training was to improve interview techniques for use in bilingual interviews. The training includes topics on interviewing techniques and bilingual interviews for workers and handlers.
- **Operations Manual for the WPS Compliance and Enforcement Program:** The Office of Civil Enforcement developed a comprehensive operations manual in conjunction with WPS enforcement training (see, "Progress Since the Review" under Finding Area No. 4). The manual includes relevant regulations, Federal Register documents, guidance and policies, examples of legal documents and administrative decisions, as well as sample complaints, pleadings and settlement documents.

Finding Area No. 2 *Improved Accountability at All Levels*

The cooperative agreement process needs to be strengthened and fully utilized by EPA headquarters and regions and states as the management tool it was designed to be.

2.1 Effective Use of the Cooperative Agreement Process Could Better Ensure Program Results

Findings and Conclusions: The review found that the FIFRA cooperative agreement work plans, state accomplishment reports, and regional evaluation reports often contained essentially the same language year after year, often with few changes.⁶ The cooperative agreements often contained few measurable commitments, and the state end-of-year accomplishment and EPA evaluation reports often did not directly address or report on success in meeting those commitments. Rarely did the findings from the accomplishment reports or the evaluations affect the content of the next year's cooperative agreement. Finally, the evaluation reports often did not contain important information that was gathered during the evaluation, most often information concerning findings from inspection and enforcement case file reviews or oversight inspections. With limited exceptions, the cooperative agreement process as implemented was not providing an effective mechanism for program planning, ensuring results related to the cooperative agreement commitments, or assuring a level of consistency in program implementation from region-to-region or state-to-state.

The regions, with few exceptions, did not provide sufficient oversight of the cooperative agreement process to assure a reasonable level of quality or consistency in the documents produced. OECA had not provided the regions with specific guidance on conducting mid- or end-of-year evaluations, and had not regularly reviewed or provided feedback to the regions and states on cooperative agreements, accomplishments reports or evaluations. The result was a significant level of inconsistency in the quality and content of these documents that likely affects the quality and consistency of implementation of the program state-to-state, and nationally.

Recommendation 2.1: The regions should use the cooperative agreement/accomplishment report/evaluation process to effectively ensure results related to cooperative agreement commitments, in accordance with existing, applicable Agency guidance. To do this:

- a) the national cooperative agreement guidance should request specific, measurable commitments
- b) State cooperative agreements should contain specific, measurable commitments;
- c) the regions should assure that states submit consistent and fully adequate accomplishment reports, in accordance with OECA guidance, that focus on the state's success in addressing the cooperative agreement commitments;
- d) the regions' evaluations should include an assessment of the state's success in

⁶As part of the review, the regions were required to submit copies of cooperative agreements, mid- and end-of-year evaluations, state accomplishment reports, the State Implementation Plans and enforcement response policies for each state.

meeting the cooperative agreement commitments, as well as discussion of findings and conclusions from the regional review of inspection and enforcement case files and overview inspections. Evaluations of states and the resulting reports should be of uniform quality state-to-state (project officer to project officer) and all review a standard set of topics or activities.; and

- e) the findings from the evaluations should play a key role in establishing the commitments for the next year's cooperative agreements, in alignment with a WPS program strategic plan.

Recommendation 2.2: OECA should update the national cooperative agreement grant guidance and ensure inclusion of national program priorities and direction, goals and key activities for the priorities that will lead to the achievement of those goals, and a clear direction for the program. OECA should also include specific guidance further establishing minimum criteria for the mid- and end-of-year evaluations. This guidance should define the specific areas to be evaluated by the regions, with enough detail to assure that the evaluations include and document file reviews and oversight inspections. The guidance should stipulate the value of regional oversight inspections each year to assure the quality of the inspections being undertaken by states.⁷ States should be asked to take steps to ensure inspection and inspection report quality. Best practices for how regions and states carry out these responsibilities should be documented. For example, one state has a WPS specialist who accompanies the pesticide inspectors to assure the quality and state-wide consistency of their WPS inspections. Lastly, as the responsible party for the national oversight of the WPS Program, OECA should make a greater effort to annually review and analyze (compare and contrast) submitted state accomplishment and EPA regional evaluation reports to ensure national thoroughness and consistency in WPS implementation among all states and all regions. It is critical that regions and states receive written feedback from OECA to the reports submitted.

Progress Since the Review

- **Pesticide Cooperative Agreement Guidance:** See “Progress Since the Review” for Finding Area No. 1.
- **Quality of state WPS-use inspections and enforcement:** OECA developed guidance and a process for reviewing worker safety inspection and case files for completeness and quality, (www.epa.gov/compliance/state/grants/fifra.html). Starting in FY 2002, the Office of Civil Enforcement (OCE), in cooperation with

⁷ See the *FIFRA Project Officers Manual* (1991), p. 7-3 -7-4; see also *Revised Policy Framework for State/EPA Enforcement Agreements* (August 25, 1986) (“Federal oversight inspections should corroborate [state inspection] findings. Oversight inspections are a principal means of evaluating both the quality of an inspection program and inspector training.”)

regions and the Office of Pesticide Programs (OPP), undertook a project to examine the quality of state WPS-use inspection and enforcement case files. Regions, as a part of their end-of-year reviews, completed a form for each file reviewed and submitted the results to OCE.

- **FIFRA Project Officers Manual:** OECA revised this manual in July 2002. The revised manual specifically addresses overall regional oversight responsibilities in the management of the state and tribal cooperative agreements.
- **New Performance Measures:** New state performance measures were issued by OECA in April 2005 for the pesticide enforcement grant. These measures, arising from the Program Assessment Rating Tool (PART) process administered government-wide by the U.S. Office of Management and Budget, will add to the measures available to EPA in evaluating state and tribal performance.
- **Mapping Farm Labor and WPS Monitoring -** Utilizing the National Agricultural Statistics Service data, a Region 9 Worker Safety Team developed a map of national WPS inspection and enforcement data in relation to state farm worker populations. Presenting existing data in a geographic perspective has provided better context for the ongoing effort to determine reasonable 'measures' of program accomplishments and whether adequate WPS monitoring is occurring nationwide.
- **Regional Assessments and Audits -** To promote improved oversight and accountability, most regions have conducted focused assessments and audits of state (and in some cases, tribal) WPS compliance and enforcement programs. These assessments were in addition to routine pesticide cooperative agreement oversight and focused WPS assessments conducted before and during the WPS program review. The audits involved comprehensive analyses of the implementation of WPS. This involved participation in state-led inspections, review of inspection materials and reports and an analysis of the use of compliance assistance versus enforcement. In addition, the regions conducted in-depth process and file reviews, meeting with the state management and other staff to look at areas including: staffing; management structure; training; compliance assistance and outreach; inspection and targeting for improved coverage and ensuring focus on high-risk areas. Enforcement response was also evaluated. Areas for enhanced focus and change were identified and action plans were put in place to address these issues. To date, significant progress has been made to address these issues.

Finding Area No. 3. Better Communications Between EPA and States and With Workers and Growers Frequent and regular communication between co-regulators would assure common understanding and the achievement of program goals. Outreach to the regulated

community and to worker advocacy groups needs to be improved.

3.1 Enhanced Communication Between OECA, OPP and the Regions Would Assist in Achieving Program Goals

Findings and Conclusions: Communication between the EPA headquarters entities (OECA/OC and OCE, and OPPTS/OPP) responsible for implementing the WPS program had not been frequent or regular enough to facilitate program implementation. This had limited the opportunities for the various offices to coordinate to achieve program goals. For some years prior to and during the period this review was conducted, no regular meetings between these entities were held to discuss strategic planning, priorities, budget, guidance or oversight.

Communication between OECA and the regions also needed to be improved. The regions requested more contact with OECA FIFRA program managers to communicate their needs and concerns for the program. In a number of instances, OECA's FIFRA program managers were not familiar with the needs and concerns expressed by the regions to the review team.

Recommendation: OC, OCE, and OPP should meet regularly and seek to jointly determine the priorities for the WPS program at the HQ level and work together, sharing resources, to undertake activities that have been jointly identified as priorities. Opportunities need to be made for the regions to communicate their needs, and those of the states, and ideas for enhancing the WPS program to OECA, and particularly to give OECA input on the cooperative agreement guidance and process. EPA should enhance its efforts to reach out to the regions and the states seeking their input, assistance and participation in national guidance and projects in a timely manner. OECA FIFRA program managers should create opportunities to meet with regional FIFRA managers and staff.

3.2 EPA Region Communication with Worker Advocacy Groups Could Be Made More Consistent

Findings and Conclusions: Only some of the EPA regions had made it a point in their state cooperative agreement evaluations to examine state relations with worker advocacy and grower groups and to encourage enhanced communication with these groups. Enhanced communication between the regions and worker advocacy groups may create an important avenue for farm workers to communicate to EPA their concerns, including specific complaints about pesticide exposure and WPS noncompliance.

Recommendation: All regions should give attention to the level of communication between states and advocacy and grower groups. Where appropriate, regions should seek to enhance this communication, with one goal being greater communication of farm worker concerns and complaints to the states and EPA.

3.3. Farm Workers Need Help on How to File WPS-Related Complaints with EPA or the States

Findings and Conclusions: According to statements made by worker advocates during OPP's WPS National Assessment meetings and information submitted by EPA regions as part of this review (*see Attachment D*), farm workers and handlers file very few complaints with EPA or states related to the WPS regulations.⁸ Regional and state personnel involved in implementing the program had varying opinions on why this was so. Some believed that the program was well implemented through compliance monitoring and outreach programs, thus compliance rates were high, and consequently workplace exposure was limited. Other states believed that workers did not know how to file a complaint or were afraid to file a complaint because: a) they were afraid they would lose their job if they complained, b) they did not believe the government would help them if they complained, or c) they feared revealing possible illegal alien status.

Recommendation: Farm workers may not be filing complaints because they do not know how to file a complaint or it is difficult or cumbersome to do so. To assure that this is not the case, OECA, OPP and the regions should develop national outreach materials for state and federal distribution for workers and handlers that explain their rights and how and where to file a complaint with EPA or the state. Some states already make complaint process information available to workers. Training materials that include this information should be available to all those conducting WPS farm worker and handler training and should be distributed during training.

Progress Since the Review

- **Monthly Senior Management Meetings:** Senior Management meetings between OPP and OECA began in 2002 to discuss FIFRA/WPS priorities, strategies and issues. Discussions pertaining to WPS have emphasized the intent to harmonize OECA and OPP efforts.
- **Interpretive Guidance Workgroup:** See "Progress Since the Review" under Finding Area No. 1.
- **Cooperative Agreement Guidance:** The CA Guidance since 2002 has stated that states and tribes should continue to work with both farm worker advocacy and grower groups to build better networks, improve state relationships, and address worker protection issues that these groups may identify. The FY 2005/07 CA Guidance asks that states develop a WPS tip/complaint system and include this within their priority setting.

⁸ See also, "Fields of Poison, California Farmworkers and Pesticides," Californians for Pesticide Reform (1999), pp. 22-23, concerning farmworker under-reporting of pesticide exposure related illnesses and injuries; and "Indifference to Safety: Florida's Investigation into Pesticide Poisoning of Farmworkers," Farmworker Justice Fund, Inc. (March 1998), pp. 28-29, concerning the threat of employer retaliation and its impact on worker complaining or reporting.

- **OECA Meetings with Farm Worker Organizations:** Beginning in FY 2004, OPP and OECA management has been meeting on a regular basis with representatives of farm worker organizations to discuss program implementation and improvement. These meetings will continue and are expected to improve the interaction between EPA and farm worker groups.
- **Recent State and Regional Activity.** As highlighted in the Office of Pesticide Program's *Report on the National Assessment of EPA's Pesticide Worker Safety Program*, EPA regions and the states have been involved in a large number of programs to train and work with growers and farm workers to improve farm worker safety. The list in the national assessment report of training courses, translations, new documents, videos (even TV and radio programs), and other outreach efforts reflects only partially what regions and states have done to work with those who use and are affected by agricultural pesticides. It is also a partial list of creative communication approaches - such as working with Catholic parishes to conduct training or cross-jurisdictional efforts to train workers who migrate between states - that are being used and shared.

Finding Area No. 4. Training for Co-Regulators to Enhance Implementation

Training for FIFRA project officers, WPS coordinators and inspectors at both the federal and state level would improve oversight, program implementation and performance in the field.

4.1 Training is Needed for Federal as well as State and Tribal Inspectors

Findings and Conclusions: OECA provided substantial WPS training through the Pesticide Regulatory Education Program (PREP) and Pesticide Inspector Residential Training (PIRT) programs, largely to states. These training sessions focused on specific pesticides topics, often including WPS matters. While PREP is for state and tribal program managers, the PIRT training is designed for field inspectors and, like the PREP training, is largely restricted to state personnel. Most regions had provided substantial training to state inspectors. Nevertheless, crucial training on FIFRA and the WPS program was still needed:

- a) Training for FIFRA project officers had not occurred in eight or more years. This affected the quality of work provided by the project officers and the uniformity of their work state-to-state and region-to-region. Only one region appeared to have a continuing program for training (and retraining) its project officers. Lack of training was repeatedly mentioned by regional WPS personnel as an explanation for poor quality, uneven, and inconsistent cooperative agreement evaluations and was therefore key to resolving a number of issues

raised in this report.⁹

b) Training for WPS coordinators at both the EPA and state level had not occurred since 1993. This particularly affected the uniformity of implementation of the program region-to-region and state-to-state.

c) Training for EPA personnel conducting inspections, both for purposes of direct implementation of the FIFRA program and to enable EPA to conduct credible overview of state inspections was inadequate. Regional personnel repeatedly expressed concern about the lack of training.

Recommendation: OECA and OPP should explore ways to provide the needed project officer, WPS coordinator, and inspector training to EPA personnel. OECA should pay particular attention to the training and capacity of inspectors in the two or three regions with significant FIFRA direct implementation responsibilities.

Progress Since the Review

- **FIFRA Project Officers Manual Revisions:** OECA issued a revised FIFRA Project Officers Manual (2002) which specifically addresses the overall regional oversight responsibilities in the management of pesticide cooperative agreements and clarified the roles and responsibilities of project officers in this process.
- **FIFRA Project Officers Workshop:** On April 1, 2003, the Office of Compliance and the Office of Pesticide Programs held a FIFRA Project Officers Workshop. Among the workshop topics were discussions on negotiating WPS compliance and enforcement commitments as a part of the grant work plan, oversight of WPS activities, and reporting WPS compliance and enforcement activities. A summary of the action items from this workshop was released January 7, 2005. Some of the recent improvements in grant oversight, including issues affecting the WPS Program, stemmed from the project officers workshop recommendations. A second workshop is planned for FY 2006.
- **WPS Attorney and Case Officer Training:** The purpose of this Office of Civil Enforcement course was to develop the infrastructure of WPS enforcement in the regions and the states. Since WPS generally is a state-authorized program and many states have incorporated the federal regulations, it was important that the regions also be trained so that they could provide legal counsel to the states. The course was an overview of the WPS civil process from the enforcement perspective for case developers and attorneys who develop and prosecute WPS

⁹ EPA's FIFRA Project Officers are responsible for overseeing both the programmatic (OPP) and compliance/enforcement (OECA) aspects of the cooperative agreements. A joint effort by OECA and OPP is necessary to provide training to the Project Officers.

cases. Each attendee received a FIFRA WPS Operations Manual. EPA developed this guide to WPS definitions, laws, regulations, published legal opinions, policies, boilerplate complaints and consent decrees, web resources, and WPS federal and state contacts. Many attorneys received Continuing Legal Education (CLE) credits for their attendance. At the January 2002 training, 30 of the attorneys and case developers were from EPA, 27 were from the states, and three were from tribal governments. The July 2003 training attracted 17 attorneys and case developers from EPA, ten from states, and one from a tribe.

- **State and Tribal PIRT Training:** Beginning in FY 2002, PIRT training included training on conducting WPS worker interviews. OECA generally funds two PIRT courses per year, in two locations. All recent PIRT courses have focused on pesticide use enforcement with an emphasis on WPS and interviewing techniques. The 2004 PIRT courses focused on state training of inspectors on the newly revised National WPS Agricultural-Use Inspection Guidance, released May 20, 2004. In 2005, one of the two courses emphasized WPS compliance work. Since 2001, EPA has trained 465 state inspectors, 26 tribal inspectors, and 11 inspectors from the territories.
- **EPA Region Staff Training:** EPA region staff train with state inspectors during annual regional training programs and also at PIRT training courses.
- **Recent Regional and State Activity -** Several regions have conducted extensive WPS inspector training programs. One focused on increasing communication between state inspectors and non-English speaking farm workers, covering culturally sensitive methods of approaching and interviewing workers. An outgrowth of this course is the development of a national guidance on interviewing Hispanic farm workers. Another region developed and delivered an inspector training course to accompany the issuance of the 2002 WPS Routine Agricultural-Use Inspection Guidance, and its emphasis on more thorough WPS inspections, worker interviews, and better documentation of detected violations. These regional training efforts supplement the national Pesticide Inspector Residential Training program.

Finding Area No. 5. Better Information on Measuring the Success of the Program

EPA should augment the information it collects concerning WPS program implementation to enable adequate assessment of program performance.

5.1 The WPS Program Needs Data to Measure Performance.

Findings and Conclusions: Prior to and during the period this review was conducted, OECA collected little information on WPS enforcement or compliance activities. EPA,

at the national level, collected only data on numbers of WPS inspections conducted.¹⁰ EPA required state reporting of only inspection and enforcement actions conducted using EPA grant funding, but EPA allowed for state reporting of all pesticide inspection and enforcement activities as well. This led to inconsistencies in state enforcement reporting, making any national analyses difficult. Some states, therefore, reported only activities “paid for” with EPA funding, while other states reported all of their pesticide activities regardless of the funding source. Of the states reviewed, three reported all pesticide inspections and six reported only federally funded inspections.¹¹ Reporting of only those inspections paid for with EPA grants understates the states' WPS inspection activities and greatly hindered the ability to assess the appropriateness of the level of state WPS inspection activity. Further, reporting only activities paid for with federal funding did not conform with the practice in other EPA-authorized state programs, where reporting of all inspections is made regardless of the funding source and where these data are a key element used by EPA to evaluate state performance.¹²

Recommendation: OECA, in concert with OPP, regions and states, should determine what data are essential to effectively manage the WPS program, and then work with the states to obtain that data. The practice of accepting submission of data for only those activities that are paid for with federal grant funding should be reconsidered. Alternatives for obtaining these data should be explored, including requiring this reporting through the cooperative agreement grant guidance mechanism, seeking voluntary reporting of these data, and using the field data approach being explored by OPP.

5.2 Accomplishment Report Quality and State Performance Would Be Improved by Development of Standards

Findings and Conclusions: Based on discussions with the regions and review of existing guidance, OECA had not identified the parameters by which state program performance was to be judged in the cooperative agreement accomplishment reports. Further, based on review of state accomplishment reports and discussions with the regions: a) many of these reports did not contain required information or indicate that certain required aspects of an evaluation had not been conducted; and b) where states failed to provide a reasonable report, the regions often did not respond by notifying the state of deficiencies. Without consistent information being provided and assessed, performance from year-to-

¹⁰ Data was collected from the states on enforcement activities. This data included WPS enforcement activity but WPS enforcement data was not broken out from other enforcement activities.

¹¹ The tenth state reviewed reported both ways, varying by quarter.

¹² In the FIFRA/WPS program, as under other federal environmental programs, including the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA), inspections are the foundation of the enforcement program, as they are the most important mechanism for identifying noncompliance. It is information that has been collected through an inspection that forms the basis of most FIFRA, RCRA and CAA enforcement actions.

year is difficult to ascertain.

Recommendation: OECA should consult with states and tribes in developing guidance that establishes parameters for state performance and for accomplishment reports for the end-of-year evaluation.

Progress Since the Review

- **Pesticide Cooperative Agreement Guidance:** See “Progress Since the Review” under Finding Area No. 1. Also, specifically on WPS data, the guidance issued on August 29, 2002, provided regional pesticide contacts with guidelines to report WPS compliance monitoring and enforcement activities conducted under the FY02 Pesticide Cooperative Agreements. The “Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report” format requires a more accurate accounting of WPS inspections (known as Tier I and Tier II), and WPS-specific enforcement actions for each state, tribe and territory with primacy, as well as for states where EPA is managing the pesticide compliance program. The guidance also included a format and procedure for collecting information from the inspection and enforcement files reviewed during the end-of-year cycle. In addition, the guidance encouraged full program (i.e., state and federally funded) reporting. The reporting requirements for WPS compliance activities were significantly upgraded in the FY 2005-2007 Pesticide Cooperative Agreement Guidance and will now capture, for example, data on the specific parts of the WPS regulations that have been violated. This data will aid in targeting inspections and training to these areas. See, www.epa.gov/compliance/state/grants/fifra.html.
- **WPS Data on Internet:** OECA now publishes on the internet the data submitted by states and tribes on performed WPS agricultural use inspections and enforcement actions. See, www.epa.gov/compliance/monitoring/programs/fifra/wpsreport.html.
- **Performance Measures:** See, “Progress Since the Review” under Finding Area No. 2. The new measures encourage and, in one case, specifically call for full program reporting.

Finding Area No. 6. *The Level of and the Utilization of Resources Are Issues*

Regions have difficulties carrying out their direct implementation of the WPS program in Indian country, and in states without primacy due to limited staff and travel funds. This review was not successful in gathering enough information concerning the adequacy of funding for the WPS program at the state level. Regardless, better utilization of allocated funds at all levels would enhance the effectiveness of the program.

6.1 Resources for Direct Implementation in States Without Primacy and in Indian Country are Limited.

Findings and Conclusions: With the exception of requirements for direct implementation, the regions stated that they received sufficient funding to support adequate WPS program implementation, though they expressed concern that the current level of funding might not continue. In states and tribes without primacy¹³, direct implementation by EPA of the FIFRA program through outreach, compliance assistance, inspections and enforcement was difficult given the current level of funding available. EPA's Region VIII reported that it did not have adequate staff or travel funds to conduct FIFRA inspections in Wyoming and Colorado at the level provided by state pesticide programs. All of the regions that have FIFRA inspection duties on Indian lands reported that they did not have adequate resources to fully carry out these responsibilities.

Recommendation: OECA and the regions need to examine both headquarters and regional resources to ensure all potentially available funds are being put toward direct implementation of the WPS program.¹⁴ Ways of leveraging resources need to be explored. Better coordination will increase resource effectiveness.

6.2 It is Unclear Whether State Program Funding is Adequate for WPS Implementation

Findings and Conclusions: While a final judgment or general statement about the adequacy of the states' WPS implementation budgets could not be made as a result of this review, it appeared, based on information from the regions' state reviews, that some states were understaffed with WPS inspectors.¹⁵

¹³ In regards to Indian country, Agency guidance requires that where a tribe has not assumed implementation of an environmental program, "the Agency will retain responsibility for managing programs for reservations " EPA Policy for the Administration of Environmental Programs on Indian Reservations, (November 8, 1984).

¹⁴ Resources for direct implementation that OECA and the regions should examine include resources provided by OECA to the regions, regional uses of funding provided (including funding provided specifically for direct implementation), and the regions' internal allocations of resources.

¹⁵ Pursuant to the WPS Program Element Review Protocol (October 10, 2000), the regions were asked to obtain from the states they reviewed information to answer the following questions concerning adequacy of state resources:

- What resources are available to the state for implementation of FIFRA?
- How has the state allocated these resources (\$ and FTE) to WPS inspections, compliance assistance, and enforcement?
- Have resource shortfalls impacted the states ability to implement the critical or core components of the WPS program?
- Has the state responded to instances of inadequate funding in ways that allowed for adequate implementation of the core components of the WPS program?

Many states, and the Association of American Pesticide Control Officials, were vocal about what they consider to be an inadequate level of federal cooperative agreement funding provided to them for implementing FIFRA, including WPS. The federal portion of most states' FIFRA/WPS budgets was small relative to other EPA media program grants. As a result, and because EPA typically has not provided new funds for undertaking new activities, many states were wary of EPA requests for enhancing their existing FIFRA/WPS efforts.

Recommendation: Through the cooperative agreement end-of-year evaluations, the regions should examine whether under-staffing or under-funding are having an adverse effect on a state's ability to implement the pesticide program. It may be appropriate to address any resource issues uncovered through the cooperative agreement process.

6.3. Additional Guidance on Targeting WPS-Use Inspections will Lead to More Effective Resource Utilization

Findings and Conclusions: Targeting WPS inspections, similar to inspections in the other FIFRA compliance programs, is a difficult undertaking. With the exception of a few states, the known WPS regulated universe is, at best, incomplete. To identify the complete regulated universe would be a very difficult task as there is no state or national reporting required of these facilities and no national database of record for tracking the regulated universe. Further, to conduct a valuable WPS inspection, it must be conducted during a narrow window of time following a pesticide application, ideally at a time when workers are present to be interviewed. Individual growers' pest management practices, the weather, what pests are present and other factors also need to be considered. Very few states have this kind of information. Agency guidance directed states to target inspections based on risk and employing a neutral inspection scheme. Agency guidance did not provide the states with assistance in determining how to conduct this targeting exercise in the face of the obstacles noted.¹⁶

The regions during their state reviews found issues with state inspection targeting, including states not focusing inspection efforts on agricultural sectors, e.g., farms, and states inspecting some growers over-and-over and others not at all. Many states had a common practice of adding WPS inspections to other agricultural-use inspections. WPS inspections should not be treated as add-ons to other agricultural-use inspections. A proactive approach to targeting WPS-use inspections is critical to an effective state WPS

Only half the regions obtained information to answer any of these questions (see *Attachment D*). The limited information obtained did not provide adequate information to determine whether state programs are adequately funded. Nevertheless, in their state reviews, some regions concluded that the state needed to increase the numbers of inspections conducted, indicating a need for increased inspection staff.

¹⁶ See Compliance Monitoring Strategy (1993), pp. 14, 19,21, and 23-24; Worker Protection Inspection Guidance (1994), pp. 1-8, and 11.

compliance monitoring program.

Recommendation: OECA and the regions should develop guidance for the states on effective WPS targeting that addresses the key issues: identifying the regulated universe and conducting the inspection during the post-application window. The guidance might include examples of effective targeting approaches and mechanisms that have been developed by some of the states. Finally, review of the states' approaches to inspection targeting should be included in the regions' annual cooperative agreement evaluation.

Progress Since the Review

- **Pesticide Cooperative Agreement Guidance:** See "Progress Since the Review" under Finding Area No. 1.
- **Tribal Programs:** On March 11, 2002, OECA and OPP jointly issued guidance titled, "Guidance on Basic Elements of an EPA Funded Tribal Pesticide Program." (www.epa.gov/oppfead/tribes/guidance.htm.) A stated purpose of the guidance is to safeguard "...the flexibility tribes require to create and build programs that accommodate their own needs while defining basic, nationally consistent program components that ensure EPA's equitable support of tribal pesticide programs." This guidance will greatly aid regions and tribes in determining the need for a tribal-run pesticide program and the necessary "basic elements" that a tribe must have in place to qualify for EPA funding of that program. OECA and OPP have committed to review this guidance and to update it as needed. Also, EPA holds monthly meetings to discuss implementation of the pesticide program in Indian country. OECA made compliance with environmental regulations in Indian country a national priority for all of the enforcement programs. The strategy for the priority focuses, in part, on tribe's capacity to improve their ability to detect and resolve non-compliance. (www.epa.gov/compliance/resources/publications/planning/priorities/fy2005/prioritytribal.pdf)
- **Targeting:** The Office of Compliance developed WPS targeting guidance and issued it in December 2004. The FY 2005/2007 Cooperative Agreement Guidance requires that all states include a WPS inspection targeting plan in their work plans. In addition, one of the new performance measures (see "Performance Measures", under "Progress Since the Review" under Focus Area No. 2), issued by EPA will put more emphasis on the effectiveness of state and tribal inspection targeting.
- **Region 8 WPS Case Initiative:** EPA has primary jurisdiction in Colorado for private applicators. As part of its enforcement responsibility, EPA conducted WPS inspections in Colorado in 2001 and found a number of growers in violation. These growers received Notices of Violation for their first offenses, pursuant to FIFRA. The Region 8 inspector conducted inspections of the same

growers the following year and found that five growers were still not in compliance with the WPS. EPA Region 8 issued administrative complaints against these five Colorado growers in 2003 for WPS violations. In the largest case, EPA proposed a civil penalty of \$231,550 for 229 violations of the WPS and FIFRA. This grower employed about 250 mostly seasonal workers and averages \$12 million in annual sales. This was the largest proposed federal Worker Protection Standard misuse penalty in EPA history. The case went to hearing and EPA is awaiting the Initial Decision. In the other cases, EPA proposed civil administrative penalties ranging from \$2,200 to \$23,320 and all the cases were settled. Region 8 is continuing its WPS inspections and filing WPS complaints in appropriate cases.

Finding Area No. 7. Strengthen Implementation at All Levels

Inspection issues, such as interviewing non-English speaking workers and/or handlers; the timing of agricultural use inspections to coincide with application events so that WPS issues can be evaluated; or conducting follow-up inspections at sites with previously identified violations, need to be addressed. EPA needs to encourage the shift from compliance assistance to enforcement in its guidance and oversight. Working with tribal governments to assume the program should be explored more fully.

7.1 Greater Consistency is Needed in State Inspector Interviewing of Farm Workers

Findings and Conclusions: State pesticide inspectors did not uniformly interview farm workers during an inspection when workers were present on the agricultural establishment. Of the ten states evaluated for this review, only four regularly interviewed workers as part of WPS-use inspections; one state varied its practices by region of the state and by inspector; and in five states, inspectors did not interview workers. Language appeared to be a significant barrier to inspectors interviewing workers. Most states had at least one Spanish-speaking inspector; some had none. An additional language barrier involved small but significant populations of workers whose language was neither English nor Spanish. In addition to the language issues, difficulty in providing anonymity to workers and handlers being interviewed was a very significant issue.

Recommendation: Further guidance from OECA on managing language barriers and providing anonymity in conducting interviews would be very helpful to the states. This guidance might take the form of descriptions of how certain states have successfully or creatively approached these problems. Training in conducting worker interviews should be provided through the PIRT. Additional funding for interpreters would also be helpful.

7.2 Encourage Full and Timely WPS Agricultural-Use Inspections

Findings and Conclusions: Regions and states generally treated WPS as an adjunct to the general FIFRA agricultural-use program. As such, most states did not target their inspections based on WPS concerns. As a result, states generally did not target

inspections to occur during the 30-day plus reentry interval (REI) period following an application when the WPS is most operative, and hence many WPS inspections were undertaken outside the regulatory window. Such inspections were of limited value in assessing compliance with certain key provisions of the WPS and cannot constitute a complete state WPS inspection program.

Recommendation: OECA should encourage full and timely WPS inspections within the regulatory window.

7.3 More Consistency is Needed Among the States in Conducting Follow-up Inspections at Sites with Previously Identified Violations

Findings and Conclusions: Follow-up inspections, i.e., inspections undertaken in response to a tip, complaint, or a reinspection of a previously identified violation, are employed differently among the states. The states appeared to be very responsive in following-up tips and complaints; however, the state practices varied with respect to reinspecting where they previously identified noncompliance. Some states conducted a follow-up inspection for nearly all noncompliance identified through an earlier inspection; other states rarely did so.

Recommendation: Regions should continue to examine in their evaluations each state's use of follow-up inspections, including their follow-up inspection policy. OECA should examine the need for some level of uniformity in state follow-up to instances of previously identified pesticide violations, the value of encouraging states to conduct re-inspections, and assure that there is a provision for re-inspections in their neutral inspection schemes. It may be appropriate for OECA to address this matter through guidance.

7.4 Shift From Compliance Assistance to Enforcement is Necessary

Findings and Conclusions: Based on discussions with regional WPS personnel and the regions' reports on state WPS programs, the review concluded that many states and some EPA regions had not yet shifted their focus in the WPS program from compliance assistance to enforcement, as required by national guidance.¹⁷ Many states did little formal WPS enforcement and often states did not seek imposition of penalties for WPS violations.

Recommendation: OECA and the regions need to better understand the reasons for limited state enforcement of the WPS program. The regions should make investigation of this matter a priority in their mid- and end-of-year evaluations, i.e., assessing the adequacy of the states' enforcement response, including adherence to state enforcement response plans, and need to incorporate into the cooperative agreement measurable

¹⁷ Pursuant to section 3 .1.1 of the FY 2002/2003 Joint OPP/OECA State/ Tribal Cooperative Agreement Guidance, "It is critical to recognize that enforcement follow-up on WPS use violations continues to be the national WPS priority for the pesticide cooperative agreement program for FY 2002- 2003."

enforcement commitments in those cases where the level of state WPS enforcement is of concern.¹⁸ The regions should determine the level at which each state is implementing the WPS enforcement and compliance assurance program and seek to accelerate the enforcement program in those states where non-compliance is a problem and enforcement is limited. Issues creating impediments to enforcement need to be identified and addressed.

7.5 State Enforcement Response Plans Need to Ensure Appropriate Response to Varying Magnitudes of WPS Violations

Findings and Conclusions: An enforcement response policy directs states/tribes on how to evaluate the gravity of violations and to respond to the violations in a predictable, uniform and timely manner with an appropriate enforcement action.¹⁹ Pursuant to the FY 1995 Pesticide Cooperative Agreement Guidance, and reiterated in subsequent guidance:

- a) delegated states "must have an up-to-date Enforcement Response Policy (ERP) in place" as a prerequisite to EPA approving funding for the cooperative agreement;
- b) delegated states are required to state in their cooperative agreement application that they will follow this guidance; and
- c) the EPA regions are required to "closely monitor state/tribal implementation of the ERP to determine its effectiveness and appropriateness."²⁰

The guidance sets forth the elements that must be included in a state/tribal ERP.²¹ The 1993 Compliance Monitoring Strategy directs the regions to "determine whether the State/Tribal Enforcement Response Policy (ERP) requires modifications to accommodate the WPS."²²

Data collected through this review indicated that a substantial portion of the states had not altered their general pesticide ERPs to account for WPS violations, treating all WPS violations as misuse violations.²³ This approach may have resulted in important

¹⁸ FIFRA Project Officer's Manual (September 1991), p. 8-3 ("The Project Officer should ensure that the state's enforcement actions are consistent with its enforcement response plan ")

¹⁹ FY 1995 Pesticide Cooperative Agreement Guidance (April 26, 1994), p. 26.

²⁰ FY 1995 Pesticide Cooperative Agreement Guidance (April 26, 1994), p. 26.

²¹ FY 1995 Pesticide Cooperative Agreement Guidance (April 26, 1994), p. 27.

²² See attachment to the Compliance Monitoring Strategy (1993), "Developing State Implementation Plans for the Worker Protection Standard," p.8.

²³ Of the ten states evaluated for this Review, five had WPS regulations (either the states's own WPS regulation or a regulation adopting the federal WPS regulations by reference); only three of the ten states had

distinctions between WPS violations of various magnitudes or seriousness being lost. All WPS violations are not equal and should not be treated as such.

Recommendation: In accordance with the Cooperative Agreement Guidance, the regions, in addition to assuring that each state is implementing its ERP in conformance with the terms of the ERP, should evaluate the adequacy of the state ERP during the cooperative agreement evaluation to assure that the state ERP adequately distinguishes among WPS violations based on seriousness and provides for an adequate deterrent enforcement response. OECA should examine the information collected by the regions concerning the adequacy of the states' ERPs to determine the need for national involvement.

7.6 There are Difficulties in Fully Promoting Tribal Assumption of the WPS Program

Findings and Conclusions: Agency guidance directs EPA to "assist interested tribal governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands."²⁴ OECA and regional FIFRA program managers expressed the following concerns about promoting further tribal assumption of the FIFRA/WPS program:

- 1) the amount of available grant funding was limited so that funding a new tribe results in less funding available for the states and tribes that have already begun implementing a cooperative pesticide enforcement program;
- 2) there was a steep learning curve for new tribal pesticide staff at the point a tribe decides to assume the program; and
- 3) tribal programs were generally limited in staffing and experience a high level of staff turnover. With such limited staffing, when turnover occurred, the program must be restarted.

In addition, many OECA and regional managers believed that most tribes that were not already receiving federal pesticide/WPS funding had little or no agriculture that would require a WPS program, and therefore the tribes had limited interest in taking on the program. An analysis of the presence of agriculture in Indian country would inform this debate.

Recommendation: Regions should work with any tribal government interested in assuming the pesticide/WPS programs. Regions should work with headquarters offices so that a consistent approach is taken across regions in accordance with EPA guidance.

developed a WPS-specific ERP.

²⁴ "EPA Policy for the Administration of Environmental Programs on Indian Reservations," (November 8, 1984). This guidance directs OECA to promote tribal assumption of environmental programs without reference to concerns regarding the impact that funding tribal grants will have on state grant funding or concerns about the efficiency of funding tribal FIFRA programs.

Regions should also collect information on agriculture in Indian country and the need for implementing the WPS program on those lands. OECA should discuss issues about the tribal assumption of the pesticide/WPS programs with the American Indian Environmental Office.

Progress Since the Review

- **WPS Routine Agricultural-Use Inspection Guidance:** In 2001, and again in 2004, EPA worked with states to revise the national WPS inspection guidance for conducting routine WPS use inspections on agricultural establishments. (See www.epa.gov/cmcompliance/state/grants/fifra.html.) The WPS Routine Agricultural-Use Inspection Guidance provides detailed instructions for federal, state, and tribal inspectors on performing thorough WPS inspections, including conducting interviews with workers and handlers as a matter of standard procedure. The guidance also establishes two tiers of WPS inspections, with Tier 1 inspections defined as those occurring within the period of applicability of the WPS requirements. The Cooperative Agreement Guidance directs regions to negotiate Tier 1 inspections.
- **Interviewing Techniques:** See “Progress Since the Review” under Finding Area No. 1.
- **Tribal Programs:** See “Progress Since the Review” under Finding Area No. 6.
- **Inspection Checklists:** States, in a nationally coordinated effort, are developing a new WPS national checklist to update the 1994 checklist issued by EPA. (See, www.epa.gov/compliance/resources/publications/monitoring/fifra/checklists/index.html.)
- **Region 2 Compliance Initiative -** In EPA Region 2, the New Jersey Department of Environmental Protection (NJDEP), New York State Department of Environmental Conservation (NYSDEC) and the Puerto Rico Department of Agriculture (PRDA) have all completed WPS Initiatives in targeted areas of their state. These WPS Initiatives involved sending inspectors in groups to a defined area for three-to-four days of intensive WPS inspections. Each of these entities also provided WPS outreach a period of time (usually three-to-four months) prior to the Initiative in surrounding areas to where the Initiative was going to take place. The average coverage by inspectors may span three-to-four cities or seven counties. EPA accompanied the states during these Initiatives, and conducted oversight. Under this program, a total of 140 inspections were conducted.

CONCLUSION AND IMPLEMENTATION OF RECOMMENDATIONS

The review concludes that there has been much success in the WPS program, especially in light of the relatively modest level of resources that are available this program. It is important to recognize the significant investment of state resources in carrying out the responsibilities for

ensuring the protection of the worker population. This report identifies many recommendations for improvement of the WPS program and some of the progress that has been made since the review was conducted. Even though many of the actions taken since the review directly address the recommendations, EPA remains committed to continuous improvement to the WPS program. There should and will be ongoing efforts to address areas identified by the review. In addition, there are many recommendations that OECA will also address arising out the Worker Safety Assessment issued by OPP on May 11, 2005. Finally, OECA, along with OPP, and regions, took the Program Review recommendations to the states that attended the September 12- 16 session of the Pesticide Residential Education Program which was dedicated to worker protection. There, EPA and the states developed a strategy and action plan for further implementing the Program Review recommendations.

ATTACHMENTS

Attachment A **WPS Program Review - Details of Review Process**

EPA-Level Review

OECA coordinated the review of EPA's implementation of the WPS program. The review was coordinated by the Team Leader for Regional Liaison and Review ("RLR") in the Information Utilization and Targeting Branch within OECA's Office of Compliance (OC), who served as the "WPS Program Review Team Leader." Regions 1, 3, 5, 6, 7, 9, and 10 and the states of Arizona, Iowa, New York, North Carolina, Oregon, Texas, and Wisconsin provided personnel who participated in the review of one or more regions or OECA. (See Attachment E, a list of WPS Program Review team members.) The teams reviewing the regions were comprised of: 1) the Review Team Leader, 2) an OECA WPS staff person from either the Agriculture Division (AD) within OC, or TPED within the Office of Civil Enforcement (OCE), 3) a WPS staff person from an EPA Region, 4) a WPS staff person from a state (usually a state in a region other than the region being reviewed), and 5) a participant from the Office of Pesticide Programs (OPP). The Review Team that reviewed OECA was comprised of the Review Team Leader and three WPS staff from the EPA regions. The RLR Team Leader, Daniel Palmer, participated in each EPA review. The other staff on the Review Teams varied. A supervisor from AD participated on the review of one region.

At least one month prior to the planned visit to each region and the visit to OECA, the WPS Program Review Team Leader provided notification of the upcoming on-site review along with a request for preparatory materials, i.e., a self-evaluation questionnaire and a list of documents to provide or to have available for on-site review. The Review Team Leader also worked with the region (and with OC and OCE for the review of OECA) to set up a schedule for meetings and interviews to be conducted during the on-site visit. Finally, the Review Team Leader coordinated the review while on-site, and led both an entrance and exit interview with regional pesticides/enforcement management.

In advance of traveling to the regions, the Review Team gathered and reviewed as much information as practicable on the region's/OECA's implementation of the WPS enforcement/compliance program. The Review Team obtained relevant documents from the OECA and the regions, obtained information through a questionnaire, and reviewed and discussed this material prior to traveling to the region. The Review Team spent two days in each of eight regions. Regions 1 and 2 received a one day visit from the Review Team Leader alone.

State-Level Review

The regions each reviewed one state. Pursuant to the protocol, Regions 4, 6, and 9 were required to review Florida, Texas, and California, respectively, because these three States have the largest farm worker populations. In most other cases, the Review Team either proposed a

state for the region to review or concurred in the region's proposal. Each region had the latitude to decide on the best approach and tools to use in gathering information on the state's implementation of the WPS program. The regions used an outline provided them that established the areas to be covered in the state review.

Each region was directed to seek participation in the review of its selected state by WPS personnel from another state, preferably a state located in another region. Two regions accomplished this (Regions 5 and 7).

The regions each prepared a report of findings of their review of the state. Prior to transmission to OECA for use in preparing the final WPS PER report, these reports were shared with the state to obtain the state's input and response. All of the regions' reports on the selected states' WPS programs were received by OECA by October 2001.

Attachment B **EPA FIFRA and WPS Guidance Referenced in Review**

Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (Office of Compliance Monitoring, Office of Pesticides and Toxic Substances, July 2, 1990)

EPA WPS Routine Agricultural-Use Inspection Guidance (OECA, July 19, 2001)

FIFRA Project Officers Manual: State/EPA Cooperative Program Management (OPPTS, September 1991).

Final 1995 Pesticide Cooperative Agreement Guidance (OPPTS and OECA, April 26, 1994).

Guidance Update for FY 1999 Pesticide Enforcement Cooperative Agreement Work Plans

Guidance Update for FY 2000 Pesticide Enforcement Cooperative Agreement Work Plans

Guidance Update for FY 2000/2001 Pesticide Enforcement Cooperative Agreement Work Plans

Mid and End-of Year Grant Evaluation Reports (memo from Director, Office of Compliance, OECA, May 7, 1999)

Pesticide Compliance Monitoring Strategy for the Agricultural Worker Protection Standard, 40 CFR Parts 156 and 170 (under cover of a memo from the Director, Policy and Grants Division, Office of Compliance Monitoring, OPPTS, March 9, 1993).

Revised Policy Framework for State/EPA Enforcement Agreements (under cover of a memo from the Deputy Administrator, August 25, 1986).

Worker Protection Inspections Guidance, EPA 722-B-94-002 (OPPTS, January 1994).

Worker Protection Standard Penalty Policy, Interim Final (OECA, September 1997).

Does the State have a WPS-specific statute or regulations?

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
No	No (but this is to change with pending reg changes)	No	Yes (by reference)	No (but state is seeking to adopt WPS)	Yes (by reference)	No	Yes (by reference)	Yes	Yes (by reference)

Does the State have a WPS-specific enforcement response plan?

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
No	No (but this is to change with pending reg changes)	No	No	Yes	? (State has incorporated WPS into its penalty matrix)	No	No (but has a WPS penalty policy)	Yes	Yes

Does the State have a WPS-specific inspection checklist?

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
Yes (missing a decontamination section)	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

Is the State reporting to EPA all inspections or only inspections done under the cooperative agreement?

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
? (5700s marked both ways)	Coop Agreement only	Coop Agreement only	All	Coop Agreement only	All	Coop Agreement only	Coop Agreement only	Coop Agreement only	All

State’s Approach to Targeting WPS Inspections

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
Set out in detail in the CMS; adhered to? - Region did not review.	Largely responding to complaints; state has no targeting tools for identifying WPS non-compliance	Targeting done by inspectors; Targeting not adhering to the SIP	Focus on high risk based on prod./ harvesting methods, # of workers, tox. of pest.; also focus on non-English speaking workers.	No formal process. Supervisor decides general type of establishment to be inspected; inspector decides where to conduct inspections.	Does not do WPS only inspections. Inspect for whole range of regulated entities, including a focus on labels.	State uses a random neutral scheme for targeted comprehensive WPS inspections. Initial and continuing emphasis is on hand labor crops. No follow-up inspections.	Not following SIP targeting scheme, priorities; state largely responding to drift complaints	State uses statewide Priority Plan for targeting which sets state inspection priorities and directs specific counties to focus on particular activities. Inspectors generally target based on NOIs or surveying the district from a vehicle.	“Programed” inspections targeted based on SIC code, inspection history, worker comp claims.

Are State inspectors regularly interviewing farm workers during WPS inspections (at the time of the Program Review state review of 2001)?

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
Yes	Yes	No	No (but appear to have begun to recently)	No (only doing interviews on misuse inspections)	Yes and No (Varies by state region; no state policy; depends on level of inspector's comfort, esp. Spanish proficiency)	No	No	Yes	Yes

State Cooperative Agreements/Work plans and Accomplishment Reports

	State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
SIP	1993	1993	1993; <i>targeting priorities not adhered to</i>	1994; <i>state successfully implemented the SIP</i>	1993; Updated (partially) in 1997 and 2000	1994; <i>no longer of much use</i>	1993; last updated 1997; <i>now a historical document, replaced by the annual work plan.</i>	1993; <i>SIP targeting priorities not adhered to</i>	Not addressed in region's Report	1993; updated 1996. <i>SIP does not contain the information needed for the next WPS implementation phase.</i>
Cooperative Agreements	CMS for 98 and 00; CA work plan for 99	Not addressed in region's Report	PPG since 1998; <i>generally capture commitments</i>	<i>PPG</i>	<i>PPG; Reflects regular changes to address evolving program</i>	<i>State meets its grant commitments; State has been very proactive in the development and evolution of their work plan.</i>	<i>PPG. Coop agreement relied upon by the state. The state meets its grant commitments. No problems identified by region in mid- or EOY reviews.</i>	Not addressed in region's Report	<i>Very detailed and an example of how accountability can be achieved through the CA and annual work plan.</i>	<i>"Adequate based on available funding."</i>

Accomplishment Reports	<i>Not submitted, as allowed by the region .</i>	<i>Timely submitted; include info on violations and enforcement actions.</i>	<i>Overall, capture the year-to-year commitments....</i>	Not addressed in region's Report	<i>Detailed; contain summary of compliance/ violations</i>	<i>Timely submitted.</i>	<i>Timely submitted.</i>	<i>Reports submitted near due date</i>	Not addressed in region's Report	<i>Reports submitted timely; necessary information provided, if available</i>
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Number of WPS complaints received by the State each year

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
12 Ag; few are WPS	5-6 / year	1/yr	?	0 (or less than 2 per year...)	?	None ever	"Not many"	18 (in two years) in three counties	<10/yr

How many instances of retaliation were reported to the State?

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
None in 2001	None	None	6 in the past 5 years	0	?	None	None	?	?

Are State resources adequate for WPS implementation and enforcement?

State A	State B	State C	State D	State E	State F	State G	State H	State I	State J
?	No	Yes (but State notes that new inspection def'n will adversely impact #s of inspections)	?	Yes	?	Yes	Yes	?	Yes

An Assessment of Worker Training under the Worker Protection Standard, Alice Larson, Work Group on Pesticide Health and Safety (June 1999).

Fields of Poison: California Farm Workers and Pesticides, Californians for Pesticide Reform (1999).

Findings from the National Agricultural Workers Survey (NAWS) 1997-1998: A Demographic and Employment Profile of the United States Farmworkers, Research Report No. 8, U.S. Department of Labor (March 2000).

Hidden Costs: Farm Workers Sacrifice their Health to Put Food on Our Tables, Kimi Jackson and Colorado Legal Services (2002).

Indifference to Safety: Florida's Investigation into Pesticide Poisoning of Farmworkers, Farmworker Justice Fund and Migrant Farmworker Justice Project (March 1998).

Migrant and Seasonal Farmworker Enumeration Profiles Study: Texas, Migrant Health Program, Bureau of Primary Health Care, Health Resources and Services Administration, Department of Health and Human Services (September 2000).

The Occupational Safety and Health of Florida Farm Workers: Environmental Injustice in the Fields?, M. Celeste Murphy, Ph.D., School of Public Administration and Urban Studies, San Diego State University (2000).

The Ones the Law Forgot: Children Working in Agriculture, Shelly Davis and James B. Leonard (2000).

Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children, U.S. General Accounting Office (GAO/RCED-00-40) (March 2000).

Worker Protection Standard Program Review Participants

Sites and Dates of On-Site Review	Program Review Team Members	Primary Regional/OECA Personnel Interviewed
Region 1 September 14, 2001	Daniel Palmer, OC/EPTDD Eva Chun, Region 10 Yvette Hellyer, OCE/TPED Amar Singh, OC/AgD	Deborah Brown, Unit Chief Wayne Toland Hugh Pilgrim Andy Triolo Robert Koethe
Region 2 September 28, 2001	Daniel Palmer, OC/EPTDD Andrea Szylvian, Region 1 Yvette Hellyer, OCE/TPED Amar Singh, OC/AgD Grace Robiou, OPP	Ken Stoller, Branch Chief Adrian Enache, Team Leader Tara Masters, WPS Coordinator Audrey Moore Mike Kramer Tom Zachos
Region 3 February 6-7, 2001	Daniel Palmer, OC/EPTDD Donald Baumgartner, Region 5 Amar Singh, OC/AgD Sharron Stewart, North Carolina Grace Robiou, OPP	Harry Daw, Branch Chief Magda-Rodriguez-Hunt, WPS Coord. Fatima El-Abdaoui Racine Davis Carmine DiSanzo Ed Cobbs
Region 4 March 27-28, 2001	Daniel Palmer, OC/EPTDD Jerry Oglesby, Region 6 Rose Burgess, OCE/TPED Eric Nelson, Wisconsin Richard Pont, OPP	Carole Kempker, Branch Chief Jeaneanne Gettle, Section Chief Marilyn Sabadaszka, WPS Coord. Andrew Wilson
Region 5 April 25-26, 2001	Daniel Palmer, OC/EPTDD Jamie Green, Region 7 Yvette Hellyer, OCE/TPED Jimmy Bush, Texas Don Ackerman, OPP	Phyllis Reed, Branch Chief John Ward, Section Chief Donald Baumgartner, WPS Coordinator Dave Star Dea Zimmerman Terry Bonace
Region 6 April 30-May 1, 2001	Daniel Palmer, OC/EPTDD Donald Baumgartner, Region 5 Yvette Hellyer, OCE/TPED John Wainwright, New York Kevin Keane, OPP	Steve Vargo, Assoc. Division Dir. Van Kozak, Branch Chief Jerry Oglesby, WPS Coordinator Greg Weiler Dick Watkins
Region 7 December 7-8, 2000	Daniel Palmer, OC/EPTDD Eva Chun, Region 10 Yvette Hellyer, OCE/TPED Jim Ellerhoff, Iowa	Luetta Flournoy, Branch Chief Glen Yaeger, Team Leader Jamie Green, WPS Coordinator John Tice Dave Ramsey Dave Wilcox

<p>Region 8 December 4-5, 2000</p>	<p>Daniel Palmer, OC/EPTDD Eva Chun, Region 10 Yvette Hellyer, OCE/TPED Ken Davis, Arizona Grace Robiou, OPP</p>	<p>Judy Wong, Program Director Mike Gaydosh, Deputy Assistant RA Debbie Kovacs, Team Leader Margaret Collins, WPS Coord. Tim Osag Jennifer Wintersteen Ron Schiller Peg Perrault</p>
<p>Region 9 February 12-13, 2001</p>	<p>Daniel Palmer, OC/EPTDD Allan Welch, Region 10 Amar Singh, OC/AgD Garnet Cooke, Oregon Richard Pont, OPP</p>	<p>Pamela Cooper, Branch Chief Katy Wilcoxon, WPS Coordinator Raymond Chavira Bill Lee Karen Heisler Amy Miller</p>
<p>Region 10 February 15-16, 2001</p>	<p>Daniel Palmer, OC/EPTDD Katy Wilcoxon, Region 9 Amar Singh, OC/AgD Ken Davis, Arizona Richard Pont, OPP</p>	<p>Marie Jennings, Unit Chief Allan Welch, WPS Coordinator Eva Chun Linda Liu Garret Wright Lyn Frandsen</p>
<p>OECA May 22-23, 2001</p>	<p>Daniel Palmer, OC/EPTDD Magda Rodriguez-Hunt, Region 3 Jamie Green, Region 7 Allan Welch, Region 10</p>	<p>John Neylan, Branch Chief, OC/AgD Jerry Stubbs, Branch Chief, OCE/TPED Yvette Hellyer, OCE/TPED Amar Singh, OC/AgD Kathy Clark, OCE/TPED</p>