

Pesticide Enforcement Grant Outcome Measure No. 1 - Repeat Violator August 2007

Repeat Violator Measure: Percent of regulated entities receiving enforcement actions in the current fiscal year that **also** received one or more enforcement actions during the current year and/or the previous two years

Formula:

$$\frac{\text{Number of Regulated Entities Receiving Prior Enforcement Actions}}{\text{Number of Regulated Entities Receiving Enforcement Actions in the current reporting year}}$$

Example:

In 2007, Grantee X issued enforcement actions to 200 regulated entities. Grantee X also issued enforcement actions to 10 of the 200 regulated entities in the three years prior to the date of the enforcement actions issued during 2007. Grantee X should report 5% ($10/200 = 0.05$) for PART Measure 1.

Explanation of the Measure: The purpose of this measure is to quantify the deterrent effect of an enforcement action on the subsequent behavior of the violator. The data used to calculate the percentage of repeat violators is calculated by looking at regulated entities which received an enforcement action in the current reporting year (see the Pesticide Enforcement Outcome Measure Reporting Form) **and** that received another enforcement action in this year and/or any of the previous two years.

Definitions

Enforcement action is defined in EPA's Guidelines for Using EPA Form 5700-33H. They include the following eleven enforcement actions:

- Civil Complaint Issued
- Criminal Actions Referred
- Administrative Hearings Conducted
- License/Certificate Suspension
- License/Certificate Revocation
- License/Certificate Conditioning or Modification
- Number of Warnings Issued
- Stop-Sale, Seizure, Quarantine or Embargo
- Cases Forwarded to EPA for action
- Other Enforcement Actions
- Number of Cases Assessed Fines

The types of enforcement actions included in the calculation of the measures should be

identical to what each state, tribe, or territories report under its Enforcement Agreement Accomplishment Report and comply with its EPA-approved Enforcement Response Policy.

States/Tribes/Territories should report enforcement actions funded by both EPA and grantee funds, not just the enforcement actions funded solely by EPA Pesticide Enforcement Grant funding on form 5700-33H.

Prior enforcement actions includes those entities to whom an enforcement action was issued for a violation of federal, state, territory or tribal pesticide laws or regulations in the **current year and** who also received a previous enforcement action stemming from a documented instance of non-compliance with federal, state or tribal pesticide laws or regulations during the current year and/or the previous two years. The date of the first enforcement action is as determined by each grantee, consistent with its enforcement policies/procedures but must be within the three most recent years. In determining what entity received a prior enforcement action (i.e., pest control company vs. pest control operator; branch office vs. parent company) each grantee should report according to how each answers this question under its local regulations or enforcement response policies.

Regulated Entities include small businesses, farms, applicators or others subject to FIFRA or equivalent state and tribal laws

Number of regulated entities receiving enforcement actions is the total number of entities receiving an enforcement action in the current reporting period. Each entity should only be counted once, no matter how many enforcement actions were initiated.

Limitations on the data:

The measure must assume wide flexibility in how a grantee administers its programs. For example, the grantee has flexibility concerning when and whether it conducts follow-up inspections of previous violators; how it determines whether an entity that receives a subsequent violation is the same as the entity which received a previous violation; what its enforcement response policies are; the scope and impact of compliance assistance, education and other prevention activities outside of the compliance monitoring and enforcement process; and the scope of the grantee's pesticide regulation and its ability to proceed to enforcement action. This flexibility, however, limits the utility of using the data generated by this measure in making grantee-to-grantee comparisons and thus should not be used in such a manner. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.

Pesticide Enforcement Grant Measure No. 2 - Complying Actions
August 2007

Complying Action Measure: Percent of complying actions taken as a result of grantee compliance monitoring and enforcement actions.

Formula:
$$\frac{\text{Number of Enforcement Actions Resulting in Verified Compliance}}{\text{Total Number of Enforcement Actions}}$$

Example:

Grantee C conducted 300 enforcement actions according to its 5700-33H report. Grantee C verified compliance in 150 of those instances. Grantee C should report a Complying Action Measure of 50% ($150/300 = 0.5$).

Explanation of Measure: The purpose of this measure is to quantify the impact of grantee compliance monitoring and enforcement activities on obtaining compliance with pesticide laws. Bringing individuals into compliance is a primary goal and outcome for grantee compliance and enforcement activity. The Complying Action measure is determined by measuring the percent of enforcement actions that the grantee has taken in the current year that result in correction of the violations. The correction of the violation must be verified by ensuring that whatever caused the violation has been corrected or actions have been taken by the violator to prevent a future occurrence. The data used to calculate this measure is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

Definitions:

Enforcement action is defined in EPA's Guidelines for Using EPA Form 5700-33H. They include the following eleven enforcement actions:

- Civil Complaint Issued
- Criminal Actions Referred
- Administrative Hearings Conducted
- License/Certificate Suspension
- License/Certificate Revocation
- License/Certificate Conditioning or Modification
- Number of Warnings Issued
- Stop-Sale, Seizure, Quarantine or Embargo
- Cases Forwarded to EPA for action
- Other Enforcement Actions
- Number of Cases Assessed Fines

The types of enforcement actions included in the calculation of the measures should be

identical to what each state, tribe, or territory report under its Enforcement Agreement Accomplishment Report and comply with its EPA-approved Enforcement Response Policy.

States/Tribes/Territories should report enforcement actions funded by both EPA and grantee funds, not just the enforcement actions funded solely by EPA Pesticide Enforcement Grant funding on form 5700-33H.

Verified Compliance – Verified compliance means the violations that were the subject of the enforcement action have been corrected or actions taken by the violator prevent a future reoccurrence of the violation. For example, if an investigation revealed that ignorance of the legal requirements resulted in the violation, verified compliance means that the grantee verified that the violator took training or otherwise gained knowledge to address its ignorance of the requirements. Likewise, if a misuse of a pesticide occurred because the applicator did not have the appropriate equipment, the verified compliance would ensure that the applicator obtained the appropriate equipment and training to use it.

This measure recognizes that more than one enforcement action can result from a single inspection. Each enforcement action must be verified to be counted in this measure.

Verified compliance includes, but is not limited to evidence that the violator:

- - Corrected advertising
 - Corrected the formulation of adulterated or exempt product
 - Registered the product
 - Properly disposed of cancelled/banned product
 - Received applicator certification & training
 - Proper removal and/or clean-up in case of structural misapplication
 - Worker Protection Standard - Central posting location provided, Personal Protective Equipment was provided, etc.
 - Registered the company

Verified - The standard for verification will be a practical standard such as written and/or signed documentation; re-inspection, or actions taken by the violator that were observed at the time of the original inspection. Some grantees, because of the falsification provision of records, require signed documents as a form of verification from the violator. Additionally, some violations may be more difficult than others to verify as corrected. Grantees need to determine the most appropriate verification method (e.g., violator provides to grantee information on the measure taken to prevent future violations). While this measure does not require follow-up inspections, all violations for the enforcement action should be verified as corrected or the facility has taken steps to

prevent a future reoccurrence in order to be counted under the measure. In addition, it is recommended that if the grantee uses a written document to verify compliance, it should fully disclose the violator's legal responsibility under applicable regulations and request detailed information on the steps taken to return to compliance.

| Examples of actions that might be demonstrated through documents include: | |
|---|---|
| Violation | Verified Compliance |
| Application records are not complete | The new complete application records are sent in to the State Lead Agency |
| Illegal disposal of pesticide product | Third party verification such as invoicing for disposal is submitted |
| No backflow prevention device | Third party verification by installer of the device is received |
| Unregistered pesticide | Registration is completed |
| Uncertified/unlicensed applicator | License or certification is granted |
| Uncertified/unlicensed applicator | Written agreement is signed to not engage in pesticide applications |
| Untrained agricultural workers | Training records signed by employees are received |
| Pesticide application information is not given | A plan for providing application information is received |
| No central location posting or application information for Worker Protection Safety | Submit photograph of central location and application log |

Limitations on the data:

The measure must assume wide flexibility in how a grantee administers its programs. For example, grantee has flexibility concerning when and whether it conducts follow-up inspections of previous violators; how it determines whether an entity that receives a subsequent violation is the same as the entity which received a previous violation; what its enforcement response policies are; the scope and impact of compliance assistance, education and other prevention activities outside of the compliance monitoring and enforcement process; and the scope of the grantee's pesticide regulation and its ability to proceed to enforcement action. This flexibility, however, limits the utility of using the

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data generated by this measure in making grantee-to-grantee comparisons and thus should not be used in such a manner. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.

Pesticide Enforcement Grant Measure No. 3 - Efficiency Measure August 2007

Efficiency Measure: Cost of conducting inspections that identifies violations.¹

Formula:

$$\frac{\text{EPA Pesticide Enforcement Grant Funding} + \text{Grantee Pesticide Enforcement Funding}}{\text{Total Number of Enforcement Actions}}$$

Example 1:

In a given year, Grantee A receives \$350,000 in EPA Pesticide Enforcement Grant Funding. Grantee A also contributes \$1,900,000 from general revenue and fees toward pesticide enforcement and has 200 enforcement actions. $350,000 + 1,900,000 = \$2,250,000$ Total program cost $\$2,250,000/200$ enforcement actions = \$11,250 Average cost per enforcement action

Example 2:

In a given year, Grantee B received \$350,000 in EPA Pesticide Enforcement Grant Funding. Grantee B also contributed \$1,900,000 from general revenue and fees toward pesticide enforcement and issued 200 enforcement actions. Every four years, Grantee B receives \$41,600 of lab equipment funding. $\$350,000 + \$1,900,000 + \$41,600/4 = \$2,260,400$ total program cost. $\$2,260,400/200 = \$11,302$ Average cost per enforcement action

Explanation of Measure: The purpose of this measure is to quantify the efficiency of an inspection program to find violations, i.e., the efficiency of the program to conduct or target inspections that identify violations. The measure calculates the average cost of such inspections. Under FIFRA, an inspection is almost always required for an enforcement action to be taken. Thus an enforcement action is a documented identification of a violation. The Efficiency Measure uses the number of enforcement actions as an indicator or a substitute for the number of inspections for which violations were identified. As defined, enforcement actions encompass a broad array of actions taken by the State Lead Agency (SLA) or Tribe - including several categories of non-penalty actions. The measure will encourage better targeting, cost reductions

¹ This measure may be reported in the inverse - inspections identifying violations per dollars spent. This is the standard formulation of an efficiency measure and is, for example, how this measure is reported in the Program Assessment Rating Tool (PART) administered by the U.S. Office of Management and Budget. Also, as stated in the explanation to this measure, “inspections identifying violations” is being treated as equivalent to “enforcement actions.”

and increased documentation of violations. It is not intended or expected to encourage penalty actions.

Since EPA pesticide enforcement grant funding only represents a portion of the total enforcement program costs, state/tribal contributions are also included in the measure.

The data used to calculate this measure is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

Definitions:

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- Civil Complaint Issued
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States/Tribes/Territories should report enforcement actions funded by both EPA and grantee funds, not just the enforcement actions funded solely by EPA Pesticide Enforcement Grant funding on form 5700-33H.

EPA Pesticide Enforcement Grant Funding - Funds provided to grantees for pesticide enforcement and compliance monitoring include:

- base enforcement
- worker protection
- enforcement discretionary funds
- lab equipment funding

Since lab equipment funding is given one time during a four-year period, the total included for EPA funding for each year should include an one-fourth allocation for lab equipment. Annually, EPA's Agriculture Branch will supply the specific amount for those receiving lab equipment funding. All other EPA funding should be included including those funds used by grantee to fund one-time training for grantee in your region. **Funds provided to grantees for PREP, PIRT and laboratory support for the antimicrobial testing program are not reported in the total enforcement funding.** Questions on what funding to include should be discussed with the Regional Office.

Grantee Pesticide Enforcement Funding - Each grantee will need to identify its financial contribution toward pesticide enforcement and compliance monitoring. This may include all staff time and overhead expenses associated with targeting and conducting inspections as well as case development and penalty assessment. It may also include training of inspectors and staff. Additionally, **support for state/tribal pesticide laboratories for equipment and payroll costs of staff who analyze samples collected during investigations leading to enforcement actions should also be included in the grantee's total funding.** Recognizing that, during an inspection, it is very common to pull samples, interview, check for the proper applicator licenses, and give direction on future compliance, the costs associated with these activities should be included in the Grantee Pesticide Enforcement Funding total.

Funding to Exclude:

Compliance Assistance: Exclude funding for the payroll for staff, or expenses associated with compliance assistance activities such as conducting seminars or public meetings with regulated industry, providing remedial training for violators, or conducting compliance assistance visits/workshops when practical from the Grantee Pesticide Enforcement Funding total.

Non-Enforcement Activities: The total figure also should not include payroll costs, expenses for staff involved with pesticide program (non-enforcement) activities such as certification and training or related overhead expenses.

U.S. EPA acknowledges grantees without cost accounting systems in place may have difficulty calculating this figure. For those grantees without a system in place, you should work with staff in your financial service organizations to determine a methodology for capturing these costs. This methodology should be documented and you should use the same approach for arriving at pesticide enforcement total costs each year.

Limitations on the data:

The measure must assume wide flexibility in how a grantee administers its programs. For example, grantee has flexibility concerning when and whether it conducts follow-up inspections of previous violators; how it determines whether an entity that receives a subsequent violation is the same as the entity which received a previous violation; what its enforcement response policies are; the scope and impact of compliance assistance, education and other prevention activities outside of the compliance monitoring and enforcement process; and the scope of the grantee's pesticide regulation and its ability to proceed to enforcement action. This flexibility, however, limits the utility of using the data generated by this measure in making grantee-to-grantee comparisons and thus should not be used in such a manner. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.



Pesticide Enforcement Outcome Measure Reporting Form

Grantee _____

Fiscal Year _____

Measure No. 1 - Repeat Violator

| A. Total # of Regulated Entities Receiving Prior Enforcement Actions | B. Total # of Entities Receiving Enforcement Actions in the Current Reporting Year | C. Repeat Violator Measure—A/B |
|--|--|--------------------------------|
| | | |

Measure No. 2 - Complying Actions

D. Total # of Enforcement Actions Resulting in Verified Compliance: _____

E. Total # of Enforcement Actions (from EPA Form 5700-33H): _____

F. Complying Actions Measure—D/E: _____

Measure No. 3 - Efficiency

G. Grantee Pesticide Enforcement Funding: \$ _____

(include staff, overhead, state pesticide lab costs, etc.)

H. EPA Pesticide Enforcement Funding: \$ _____

Base Enforcement _____

Worker Protection _____

Enforcement Discretionary _____

Lab Equipment (1/4 of total amount) _____

I. Efficiency Measure—(G+H)/E: _____