

# Chapter One ADMINISTRATION

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# ADMINISTRATION

This manual is intended to provide guidance to inspectors conducting pesticide inspections under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Procedures and forms have been recommended for federal inspections, but equivalent State procedures and State forms may be substituted where appropriate.

EPA forms are available from the EPA warehouse in Cincinnati. Some forms are available at EPA's Form Smart site: [dcwww.wic.epa.gov](http://dcwww.wic.epa.gov). For a complete listing of the forms and where to obtain them, see Exhibit 1-1.

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## INTRODUCTION

The role of the FIFRA inspector in the area of enforcement is to gather accurate information that will enable the U.S. Environmental Protection Agency (EPA) to protect human health and the environment from unsafe and ineffective pesticides and unlawful sale, distribution, or use of pesticides. An energetic enforcement program, fairly but firmly administered, is the best guarantee that EPA will be successful. An effective enforcement program is generated by well-trained, qualified field personnel conducting inspection activities and investigations to (1) detect violations and (2) collect evidence necessary to successfully prosecute FIFRA violators and to remove potentially violative pesticides from the channels of trade. See Chapter 2 for a list of definitions.

This manual is intended to provide the inspector with standard operating procedures. The manual contains the authorities, objectives, responsibilities, policies, and procedures necessary for field staff to do their job effectively. This manual is not intended to cover every possible situation that may be confronted in an active, dynamic inspection program. However, it should enable field personnel to operate in an effective, knowledgeable manner in most circumstances.

While this manual is primarily to provide guidance to EPA inspectors (and/or State/tribal inspectors conducting Federal inspections for EPA), it may be valuable in orienting and training State inspectors and other Regional personnel involved in pesticide enforcement work.

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## STANDARDS OF PROFESSIONAL CONDUCT

Through many years of inspection experience, EPA has developed procedures and requirements that ensure ethical standards on the part of its inspectors. These standards have been established to protect the individual, the Agency (EPA), and industry. Because inspectors act as officers of the United States government, they must perform their duties with the highest degree of honesty and integrity. In addition, they are expected to conduct themselves in a manner that will reflect favorably on themselves and the Agency<sup>1</sup>. As such, the following standards of ethics must be observed at all times. The inspector shall:

- < Conduct investigations within the framework of the United States Constitution and with due consideration for individual rights, regardless of race, sex, creed, or national origin.
- < Uphold the Constitution, laws, and regulations of the United States and all governments therein and never be a party to their evasion.
- < Never use any information obtained confidentially in the performance of governmental duties as a means of making private profit.
- < Never commit any act (or failure to act) in a manner that might be construed as being motivated by personal or private gain (conflict of interest).
- < Never discriminate by dispensing special favors or privileges to anyone, whether for remuneration or not; and never accept, for his/her or their families, favors or benefits under any circumstances.
- < Develop and report facts of an investigation completely, objectively, and accurately.
- < Make no promises of any kind; government employees (inspectors) cannot bind government enforcement.
- < Continually attempt to improve professional knowledge and technical skill in the investigative field.

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## PROFESSIONAL ATTITUDE

Because the inspector is often the initial or only contact between the Agency and industry, he/she must be tactful, courteous, and diplomatic, while establishing an atmosphere of cooperation through a firm but responsive attitude.

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<sup>1</sup>*Individual States have developed their own means of ensuring ethical actions and their procedures and requirements must also be considered at all times.*

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## ATTIRE

Good public relations and practical common sense require appropriate dress for inspection activities. Protective clothing is required for many inspections. Coveralls or other clothing is available for this purpose. Inspectors must wear any safety equipment that may be customary in the establishment being inspected. Chapter 16 provides additional information on personal protective safety equipment.

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## INDUSTRY, PUBLIC, AND CONSUMER RELATIONS

It is important to obtain the cooperation of and establish good working relations with the industry, the public, and consumers. The inspector must introduce himself/herself by name, title, and organization, present his/her credentials, and explain the purpose of the visit. The inspector must not speak of any product manufacturer or person in a derogatory manner. All information acquired in the course of an inspector's duties is to be used for official purposes only.

See Appendix D (Media Interactions) for more information on how to handle interviews with the media.

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## GIFTS, FAVORS, AND LUNCHEONS

An inspector shall not accept anything of value from the trade, public or consumers for, or because of, any official act he/she has performed or will perform. An inspector may, however, accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meetings or on inspection tours. This shall not be interpreted to mean that the inspector may accept meals or refreshments when it is proper and feasible for him/her to pay for his/her own.

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## RECORDKEEPING

### Time

EPA employees must keep accurate records of the time they spend working on official projects or when taking various forms of leave. Incorrect timekeeping may result in a paycheck for an incorrect amount, a late paycheck, or no paycheck at all. EPA employees are urged to familiarize themselves with EPA's Pay Administration and Leave manuals.

Strict adherence to the procedures outlined in the manuals will ensure that employees are properly and timely compensated for their work. The manuals are available from Regional EPA personnel offices.

### Travel

The Resources Management Directives System (RMDS) presents EPA's official policies and procedures on travel. The RMDS EPA Travel Manual (2550B) contains many detailed examples to aid EPA employees in understanding the travel-related policies and procedures. All EPA employees who travel on official business should familiarize themselves with the EPA Travel Manual and Regional policies. Failure to follow travel procedures properly may result in delayed reimbursement or no reimbursement at all.

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## KNOWLEDGE REQUIRED OF AN INSPECTOR

In addition to being thoroughly familiar with FIFRA and the regulations promulgated there-under, an inspector must have certain communication and intuitive skills in order to complete a thorough investigation. The inspector must know how to:

- < Substantiate all facts with statements of witnesses or items of evidence.
- < Collect evidence to support a successful civil action, criminal prosecution, or seizure.
- < Obtain respect, inspire confidence, and maintain the good will of the public, industry, and consumers during interviews.
- < Conduct sampling procedures in a safe and professional manner.
- < Use good interview techniques and detect discrepancies or lack of good faith during interviews.
- < Be accurate, thorough, unbiased, and fair while conducting an investigation/inspection.
- < Testify in court.

To carry out their duties, inspectors must be thoroughly familiar with the legal basis for their actions. Therefore, an inspector must have a thorough knowledge of FIFRA and all regulations and policies promulgated thereunder.

In addition, an inspector must be aware of the following federal laws (the text of these laws can be found in hard copy or on a CD-ROM available through the Agency):

- < Clean Air Act (CAA).
- < Federal Water Pollution Control Act (FWPCA)/ Clean Water Act (CWA).

- < Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Superfund Amendments and Reauthorization Act (SARA).
- < Endangered Species Act (ESA).
- < Emergency Planning and Community Right-To-Know Act (EPCRA).
- < Federal Food, Drug, and Cosmetics Act (FFDCA).
- < Hazardous Materials Transportation Act (HMTA).
- < Occupational Safety and Health Act (OSHA).
- < Resource Conservation and Recovery Act (RCRA).
- < Safe Drinking Water Act (SDWA).
- < Toxic Substances Control Act (TSCA).
- < Appropriate State pesticide and environmental legislation.

The CAA addresses air pollution from stationary sources (factories and utilities) and mobile sources (cars and trucks). It was amended in 1990; the 1990 amendments greatly expand the scope of the CAA. The amendments spell out in detail actions that must be taken by the EPA, the States, and regulated industries.

The CWA (also known as the FWPCA) and establishes national water quality goals. Water pollution from industrial and municipal facilities is controlled primarily through permits that limit discharges. These permits are issued under the National Pollutant Discharge Elimination System (NPDES). NPDES permit limits are based on effluent guidelines for specific pollutants, performance requirements for new sources, or water quality limits. NPDES permits also set forth schedules and time tables for construction and installation of needed equipment.

CERCLA authorizes EPA to clean up hazardous substances at closed and abandoned waste sites and to recover the cost of cleanup and associated damages from responsible parties. EPA also can take enforcement action against responsible parties to compel them to clean up sites. The Superfund Amendments and Reauthorization Act (SARA) amended CERCLA in 1986. SARA made several important changes and additions to the program. SARA stressed the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites; required Superfund actions to consider the standards and requirements found in other State and federal environmental laws and regulations; provided new enforcement authorities and settlement tools; increased State involvement in every phase of the Superfund program; increased the focus on human health problems posed by hazardous waste sites; encouraged greater citizen participation in making decisions on how sites should be cleaned up; and increased the size of the trust fund to \$8.5 billion.

SARA also required EPA to revise the Hazard Ranking System (HRS) to ensure that it accurately assessed the relative degree of risk to human health and the environment posed by uncontrolled hazardous waste sites that may be placed on the National Priorities List (NPL).

The ESA provides broad protection for species of fish, wildlife, and plants that are listed as threatened or endangered in the U.S. or elsewhere. Provisions are made for listing species, as well as for recovery plans and the designation of critical habitat for listed species. The Act outlines procedures for federal agencies to follow when taking actions that may jeopardize listed species, and contains exceptions and exemptions. The ESA also is the enabling legislation for the Convention on International Trade in Endangered Species of Wild Fauna and Flora, commonly known as CITES. Criminal and civil penalties are provided for violations of the ESA and the Convention.

The FFDCA authorizes the Food and Drug Administration (FDA) to regulate foods, cosmetics, drugs, and medical devices. The law is intended to assure the consumer that foods are pure and wholesome, safe to eat, and produced under sanitary conditions; that cosmetics are safe and made from appropriate ingredients; that drugs and devices are safe and effective for their intended uses; and that all labeling and packaging is truthful, informative, and not deceptive. In addition, EPA determines the safety of pesticide products and sets tolerance levels for pesticide residues in food. It is the responsibility of FDA to enforce the tolerance levels established by EPA.

The objective of the HMTA is to improve the regulatory and enforcement authority of the Department of Transportation to protect against risks to life and property which are inherent in the transportation of hazardous materials in commerce. The HMTA empowered the Secretary of Transportation to designate as hazardous material any “particular quantity or form” of a material that “may pose an unreasonable risk to health and safety or property.” Regulations apply to any person who transports, or causes to be transported or shipped, a hazardous material; or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials.

Congress passed the Occupational and Safety Health Act (OSHA) to ensure worker and workplace safety. OSHA ensures that employers provide their workers a place of employment free from recognized hazards to safety and health, such as exposure to toxic chemicals, excessive noise levels, mechanical dangers, heat or cold stress, or unsanitary conditions. In order to establish standards for workplace health and safety, OSHA created the National Institute for Occupational Safety and Health (NIOSH) as the research institution for the Occupational Safety and Health Administration.

RCRA provides “cradle-to-grave” management of hazardous waste, management of solid wastes, and regulation of underground

storage tanks that contain chemical and petroleum products. Under RCRA, hazardous wastes are subject to controls governing their generation, transportation, storage, and disposal. Nonhazardous wastes are subject to EPA guidelines and criteria for managing solid waste. Underground storage tanks that do not meet technical standards are to be phased out or be upgraded with leak detection systems.

Under SDWA, EPA sets standards for the quality of drinking water served by public water systems known as maximum contaminant levels (MCLs). Public systems are required to sample their water periodically and report findings to the State or EPA. In addition, they must notify consumers if they do not meet standards or have failed to monitor or report. SDWA also regulates the injection of materials into underground injection wells.

TSCA authorizes EPA to regulate the manufacture, distribution in commerce and use of toxic substances. Under TSCA, chemical manufacturers are required to notify EPA in advance if they intend to manufacture a new product. For both new and existing chemicals, EPA can require testing and additional information. Based on risk-benefit analysis, EPA can prohibit or limit a chemical's manufacture and use.

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## DOCUMENTARY SUPPORT

In addition to physical samples, documentary support is necessary for an effective case. These documents may include field notebooks, statements, copies of records, photographs, drawings and maps, printed matter, and mechanical recordings. See Chapters 7 and 9, Pesticide Producing Establishment Inspections, and Pesticide Product Sampling, for additional information.

### Field Notebooks

The field notebook is the core of all inspection documentation. The field notebook (preferably bound) is part of the Agency's files and is not the inspector's personal record. (Note: Notebooks are held indefinitely pending disposition instructions). The field notebook is intended to provide accurate and inclusive documentation of all inspection activities and to provide a basis for written reports. It shall contain only facts and pertinent observations; and the language shall be objective, factual and free of personal feelings.

#### Inspection Entries

It is essential for the inspector to keep detailed records of inspections, investigations, samples collected, etc. to serve as an aid in writing reports and giving testimony. The following types of information shall be included in the field notebook:

- < **Observations.** Record all conditions, practices and other observations that will be useful in preparing the inspection report or will contribute to valid evidence.

- < **Unusual Conditions and Problems.** Note and describe in detail any unusual conditions and problems encountered during the course of the inspection visit.
- < **General Information.** List names and titles of personnel and the activities they perform along with any statements they may have made and other general information.

## Statements

Statements may be obtained from persons having firsthand knowledge of the facts pertinent to a potential violation. The purpose of obtaining a statement is to record in writing, clearly and concisely, relevant factual information so that it can be used to document an alleged violation. Statements are similar in most respects to an affidavit except that the statements are not made under oath. The following procedures and considerations may be helpful in developing a proper statement:

- < Determine the need for a statement. Will a statement provide useful information? Is the person making the statement qualified to do so by having personal knowledge?
- < Ascertain all the facts and record those which are relevant and which the person can verify in court. Make sure all the information is factual and firsthand. Avoid taking statements that cannot be verified personally.
- < Remember to (1) use a simple narrative style (avoid stilted language); (2) narrate the facts in the words of the person making the statement (use the first-person singular); and (3) present the facts in chronological order, unless the situation calls for some other arrangement.
- < Positively identify the person making the statement (name, position, address, etc.).
- < Show why the person is qualified to make the statement.
- < Present all pertinent facts.
- < Read the statement to the person (preferably in the presence of a witness) and make any necessary changes, initialing all corrections or changes.
- < Ask the person making the statement to write a brief concluding paragraph indicating that he/she read and understood the statement. This safeguard will counter a later claim that the person did not know what he/she was signing.
- < Have the person sign the statement. The inspector must also sign and date the statement. Be sure to provide a copy of the statement to the signer if requested.
- < If he/she refuses to sign the statement, elicit an acknowledgment that it is true and correct, and ask for a statement in his/her own hand to that effect (i.e., "I have read the statement and it is true, but I am not signing it

because..."). Failing that, declare at the bottom of the statement that the facts were recorded as revealed and that the person read the statement and avowed it to be true. Attempt to have any witness to the statement sign the statement with his/her name and address, and initial and date the statement.

## Photographs

The documentary value of photographs ranks high as admissible evidence. Clear photos of relevant subjects, taken in proper light and at the proper lens setting provide an objective record of the conditions at the time of inspection.

A sharp, clearly lit photograph is often only second to the inspector's personal observations of the subject when it applies to case-winning evidence. Carefully select photographic equipment. Each medium has its advantages and disadvantages.

Polaroid-type instant photos must be identified immediately with location, date, inspector's initials, and related sample number (if applicable). Photographs taken on film requiring developing should be identified in the field notebook in the order they are taken. Once developed, identification must be transferred to the photo itself. All photo information must be recorded in the field notebook.

It is sometimes useful to photograph a subject from a point that will indicate the location and direction of the subject. The addition of an object of known size, such as a person or a car, will help indicate the size of the subject.

Flash photos must not be taken in areas where there is a danger of explosion.

To avoid difficulties arising from confidential claims surrounding the photographs, it is recommended that all unnecessary background be shielded or that the subject be moved before the photographs are taken. If an instant camera is not used and a confidentiality claim is made, the film must be processed by a contractor authorized for access to confidential business information.

Videography is gaining popularity in enforcement documentation. It is instant, color, and easily viewed on common television monitors.

Photographic documentation should tell the story with as little narrative as possible. This can be done by shooting series of establishing shots that show not only the medium or subject, but one or several permanent landmarks. These landmarks can be used for reference to establish the exact location. (The medium of subject photographed will emphasize a specific object or event.)

Digital photography and/or video photography should include the date and if possible, time of the photograph so that this information is imprinted on each photograph, frame of the film, etc. To maintain the integrity of the original photographs the inspector shall ensure the proper chain-of-custody.

## Drawings and Maps

Schematic drawings, maps, charts, and other graphic records may be useful in documenting a violation. They can provide graphic clarification of site location relative to the overall facility, spill or contamination parameters, relative height and size of the objects, and other information which, in combination with samples, photographs and other documentation, can produce an accurate and complete evidence package. Drawings and maps must be simple and free of extraneous details. Basic measurements must be included to provide a scale for interpretation and compass points must be included.

All drawings, maps, etc. must be identified with the inspector's initials, the date, sample number, and any other pertinent information (e.g., "not drawn to scale").

## Printed Matter

Brochures, literature, labels, and other printed matter can provide important information regarding a firm's conditions and operations. These materials may be collected as documentation. All printed matter must be identified with date, inspector's initials and related sample numbers.

## Mechanical Recordings

Records produced electronically or by mechanical apparatus can be entered as evidence. Charts, graphs, and other "hard copy" documents should be treated as documentation and handled accordingly.

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## DISCLOSURE OF OFFICIAL INFORMATION

### Requests for Information by the Trade or Public

EPA has an "open-door" policy on releasing information to the public. This policy is aimed at making information about EPA and its work freely and equally available to all interested individuals, groups, and organizations. It is also the Agency's policy to make the fullest possible disclosure of information without unjustifiable expense or unnecessary delay to any requester. The Freedom of Information Act (FOIA) which dictates this policy, however, also cites the following nine classes of exemptions to this policy:

- < Matters of national defense or foreign policy.
- < Internal agency rules.
- < Information exempted by other statutes.
- < Confidential Business Information (CBI) - trade secrets, commercial or financial information.
- < Privileged inter- or intra-Agency memoranda.
- < Personal privacy.

- < Investigatory records compiled for law enforcement purposes<sup>2</sup>.
- < Records of financial institutions.
- < Geographical or geophysical information and data concerning wells.

It is important to know which types of information can and cannot be released. There are four options for handling an FOIA request:

- < **Release Documents.** If a record in EPA's possession does not fall into one or more of the nine exemption categories, its release is mandatory.
- < **Withhold Documents.** If the document in question falls into one or more of the nine exemption categories it may not be released.
- < **Partial Withholding.** With regards to records containing both exempt and nonexempt information. If the exempt portion is reasonably segregable and will not result in an unintelligible nonexempt record, this nonexempt information may be released.
- < **Discretionary Release.** If a record is legally exempt by virtue of Exemptions 2, 5, or 7 of FOIA, it may be released at the Agency's discretion. If a record is contained in the Privacy Act system of records, it may not be released at the Agency's discretion.

### Confidential Information

Sections 10 and 12(a)(2)(D) of FIFRA address the protection of trade secrets, and confidential information. All confidential information received must be marked as such and placed in a locked filing cabinet or safe.

Only authorized persons (authorized by the Regional Administrator, Division Director, or Branch Chief) shall be allowed access to the file. Information marked "trade secret" or "confidential" must not be copied unless authorized in writing by the Regional Administrator, Division Director, or Branch Chief. The written authorization for the copies must contain the following information:

- < The name of the recipient of the copy.
- < The intended purpose for which the copy is to be used.
- < The manner in which the copy is to be disposed of after use.

In addition, a copy of the written order permitting the copying must remain in the file.

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<sup>2</sup>*State inspectors performing federal inspections shall not release under FOIA or similar State law, requests, any notes, documents, reports, etc. obtained or prepared in connection with a FIFRA inspection until such time as enforcement proceedings are concluded. Should the State receive a FOIA or similar request for documentaion reletive to an open or ongoing FIFRA inspection, the State shall contact the EPA Regional FIFRA Program Office or Headquarters FIFRA Enforcement Office prior to releasing any information reletive to the FIFRA inspection.*

With regard to requests for access to confidential information, when any member of the public or a State or local agency or any federal agency not concerned with carrying out the Act requests access to any information considered confidential, the person handling the request must comply with the procedures called for in the Freedom of Information Act Regulations, 40 CFR Part 2.

All such requests must be referred to the Regional office.

State inspectors conducting inspections using federal credentials to conduct FIFRA section 8 and 9 inspections are NOT authorized to access CBI. State inspectors must not attempt to obtain FIFRA CBI when conducting inspections on behalf of EPA. However, State statutes may permit the collection of CBI when conducting inspections strictly under State authority and State credentials.

### **Procedures for FIFRA CBI Acquired During An Inspection**

An inspector must be authorized by the Regional Document Control Officer (DCO) to have access to FIFRA CBI during an inspection or the person claiming the information to be FIFRA CBI must voluntarily provide it to the inspector if the inspector is not cleared for access to CBI.

### **Obtaining CBI by an Authorized Inspector**

The following procedures must be adhered to when an authorized inspector receives FIFRA CBI:

- < The information received shall be marked as "FIFRA CBI" or the red FIFRA CBI cover sheet shall be attached to the information.
- < The CBI information shall be placed in an envelope, sealed, and marked, "CBI - To Be Opened by Addressee Only," and the name of the Regional DCO. This envelope is then placed into another envelope which is normally addressed and sealed, with no indication that it contains CBI.
- < The envelope shall be handed over by the inspector to the Regional DCO.

### **Obtaining CBI by an Unauthorized Inspector Through Voluntary Access**

The following procedures must be adhered to when an unauthorized inspector receives FIFRA CBI:

- < The person claiming the information to be FIFRA CBI shall mark the information FIFRA-CBI.
- < The person shall place the CBI marked information in an envelope marked "CBI-To Be Opened By Addressee Only" and the name of the Regional Document Control Officer (DCO). This sealed envelope must then be placed into another envelope which is normally addressed and sealed with no indication that it contains CBI.

- < The envelope may be given to the inspector for hand delivery to the Regional DCO, or the person may mail the envelope, certified mail, to the Regional DCO.

For more information concerning confidential information, refer to the FIFRA Information Security Manual, which is available from the Regional DCO.

**Exhibit 1-1: List of EPA Federal Forms used for FIFRA**

Form #	Title	Date of Revision	Where to Obtain
3540-1	Notice of Arrival of Pesticides and Devices	(2-00)	1
3540-2	Notice of Inspection	(01-01)	1
3540-3	Receipt for Samples	(01-01)	1
3540-4	Sample Record Jacket (Front Panel Only)	(01-01)	2
3540-5	Report of Analysis	(01-01)	1
3540-5A	Report of Analysis (Continuation)	(01-01)	1
3540-13	Copy of Invoice and Shipping Records	(01-01)	2
3540-17	History of Sample	(01-01)	2
3540-19	Dealer's Statement	(01-01)	2
3540-20	Use Investigation Report	(01-01)	1
3540-25	Notice of Pesticide Use/Misuse Inspection	(01-01)	1
3540-26	Receipt for Pesticide Use/Misuse Samples	(01-01)	1
3540-27	Notice of Stop Sale, Use or Removal Order	(01-01)	1
3540-28	Inspector's Credentials (for States/tribes)	(01-02)	3
3540-41	Chain of Custody Record	(01-01)	2
3540-42	Statement	(07-01)	2
7500-2	Official Sample Seal	(07-75)	1
8510-14	Biological Report of Analysis	(01-01)	1

1. US EPA Form Ordering Information:

E-mail: [ncepiwo@one.net](mailto:ncepiwo@one.net)  
 Phone: Toll Free 1-800-490-9198 or for EPA employees (513) 489-8190  
 Fax: (513) 489-8695  
 Mail: United States Environmental Protection Agency  
 National Service Center for Environmental Publications (NSCEP)  
 PO Box 42419  
 Cincinnati, OH 45242

2. US EPA Intranet at: [dcwww.wic.epa.gov:9876/oa/forms/index.htm](http://dcwww.wic.epa.gov:9876/oa/forms/index.htm)

3. Upon Request to: Mickey Post, US EPA/OECA/OC/AgD (2225A);  
[post.mickey@epa.gov](mailto:post.mickey@epa.gov); ph: (202) 546-4157