

Pesticide Enforcement Measures

Frequently Asked Questions

The Pesticide Enforcement Measures were developed by a workgroup of state and tribal members, Regions 4 and 7, OPP and OECA. Nine states volunteered to pilot the measures in 2013, and the current Measures reflect feedback from the pilot states as well as input from additional states and tribes through AAPCO, SFIREG and TPPC. The Measures are included in the FY15 – 17 Cooperative Agreement Guidance and the FIFRA Work Plan and Report Template. Both documents can be found at the Office of Compliance website at: <https://www.epa.gov/compliance/fiscal-year-2015-2017-fifra-cooperative-agreement-guidance>

The purpose of this FAQ document is to provide answers to some frequently asked questions that have been asked since the availability of the Measures. The answers were prepared by the Performance Measures FAQ Workgroup, comprised of representatives of EPA Regions 7 and 10, OPP, OECA as well as Nebraska and Virginia. Project Officers may submit additional questions to the workgroup by contacting Helene Ambrosino at Ambrosino.Helene@epa.gov.

General:

Question	Answer
Q1 - What is the difference between “case” and “enforcement action?”	A “case” follows an inspection or an investigation and includes a determination that there has been an alleged violation. An “enforcement action” is the enforcement response authorized by the applicable Enforcement Response Policy.
Q2 - What is the difference between “inspection” and “investigation”?	The terms “inspection” and “investigation” are defined under Measure 1A and those definitions apply to the use of the terms throughout the Performance Measures.
Q3 - Should reporting be based upon the grantees “total program” or based upon those activities identified under the “workplan only”?	Reporting should be consistent with 5700 form reporting. Therefore, if the grantee is reporting “workplan only” on its 5700 forms, Performance Enforcement Measure reporting should also be “workplan only”. If the grantee is reporting “total program” on its 5700 forms, Performance Enforcement Measure reporting should also be “total program”.
Q4 - When counting enforcement actions, do we include enforcement actions regardless of the year the inspection took place?	Yes.
Q5 - When counting enforcement actions, what types of actions do we include (e.g. NOWs)?	When counting enforcement actions include any type of action that is included on the 5700 forms.
Q6 - When counting inspections, do we include “for cause” inspections, routine inspections or both.	Both. The terms “inspection” and “investigation” are defined under Measure 1A and those definitions apply to the use of the terms throughout the Performance Measures. An “inspection” is the process by which an inspector collects information in order to determine

	compliance of a regulated entity and is considered a routine activity. An “investigation” is a non-routine, for-cause activity in response to a complaint or tip that involves a suspected violation.
Q7 - When counting inspections, do we include inspections where no violations were noted?	Yes.

Measure 1A: Compliance with WPS Regulations

Question	Answer
Q1 - If a grantee has WPS regulations that include non-agricultural applications, should those be reported under this Measure?	No.

Measure 1B:

Question	Answer
Q1 - When counting uncertified applicators coming into compliance, do we include only those situations brought about through an inspection, or could we also count results achieved through compliance assistance efforts?	Count only those who came into compliance after an inspection.
Q2 - When counting the number of “inspected” applicators should we include “investigated” applicators?	Yes. Include applicators encountered during inspections and investigations.
Q3 - When counting uncertified applicators for “Number of uncertified applicators found during the inspection that should have been certified”, do we include people who have a state certification but not a federal certification?	Count any applicator who is not in compliance with the certification requirements of that jurisdiction.
Q4 - What does “Number of inspected applicators who are required to comply with certification requirements” mean? Just because an applicator is licensed	The Measure counts those applicators authorized in their state to apply pesticides at the time of the inspection. Refer to Performance Measures, footnotes 6-8 for applicable definitions.

<p>doesn't mean they are "required" to comply with certification requirements. They also have the option to re-test.</p>	
<p>Q5 - When counting uncertified applicators for "Number of uncertified applicators found during the inspection that should have been certified", does this include all types of inspections?</p>	<p>Yes.</p>
<p>Q6 - When counting applicators, do we only count the individuals that were licensed as "applicators" i.e. PA, CA? Should it also include CO, PO, etc.?</p>	<p>Depends on how operators are defined in your state. If the "operator" definition meets the federal competency standards of testing and certification and allows the individuals to legally apply pesticides in your state, then "operators" would be considered "applicators." The intent of the Measure is to broadly capture all applicators covered by the label requirements including those "licensed" by the state/tribe to apply pesticides.</p>
<p>Q7 - When counting uncertified applicators, is "uncertified" the same as "not licensed"?</p>	<p>Possibly. It depends on the nomenclature of the grantee. In some jurisdictions a "license" is different from a "certification". Count applicators who should have been in compliance with all requirements to apply pesticides at the time of the inspection.</p>
<p>Q8 - What does "discontinued making applications mean"? For example we do an inspection and find someone not licensed. Are we supposed to ask that they discontinue the application? If they do for that day, is this what we are counting? Does EPA want any other follow up to see if they become licensed and should we be back the next day and following up to see if they are making applications again?</p>	<p>Grantees retain discretion and flexibility to determine how best to verify compliance. At the time of the inspection where non-compliance is detected, the inspector needs to inform the applicator as to what the requirements are and what they can do to come into compliance.</p>
<p>Q9 - What does "brought into compliance" mean? How is it different from obtaining the certification or ceasing the unlawful application?</p>	<p>See Performance Measure, footnote 9.</p>
<p>Q10 - The applicator is certified/licensed but not certified/licensed for the</p>	<p>Yes. This is a violation. Report the applicator as an "uncertified applicator".</p>

particular application or product. Should they be counted?	
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Measure 2:

Question	Answer
<p>Q1 - Since ag-use and non-ag use product labels can contain language throughout that pertain to food, drinking water, protection of water, soils and non-target species, it would be helpful to clarify that these measures pertain to ag and non-ag applications, and to include several different examples of applicable label language (for ag and for non-ag). This questions was also submitted in reference to Measure 3.</p>	<p>The Measure applies to ag and non-ag use products. Examples of a use that may have an effect on diet include but are not limited to: (1) pesticides used in dining/eating areas, (2) pesticides for use in or around any water wells (3) outdoor uses that drift onto food crops, or (4) mixing/loading in a buffer area. Any label language that includes enforceable statements including either food or drinking water are to be considered. Examples of pertinent label language may include, but are not limited to, “do not use in food preparation areas” or “do not apply within 50 feet of a well”. It could also be a situation in which there was a buffer zone on the label intended to protect a food crop and the pesticide drifted onto a food crop for which there was no tolerance.</p>
<p>Q2 - Is the intent of this measure to include pet food and animal feed?</p>	<p>The intent of the measure is to address food/water consumed by humans. Therefore, when counting label language violations related to food, do not include pet food. However, since humans consume animals and animal byproducts, the measure should include violations related to animal feed.</p>

Measure 3:

Question	Answer
<p>Q1 - Since ag-use and non-ag use product labels can contain language throughout that pertain to food, drinking water, protection of water, soils and non-target species, it would be helpful to clarify that these measures pertain to ag and non-ag applications, and to include several different examples of applicable label language (for ag and for non-ag). This question was also</p>	<p>See Answer to Measure 2, Q1.</p>

submitted in reference to Measure 2.	
Q2 - What constitutes a pesticide-related inspection that involves soil/water/non-target species?	An inspection will be considered to “involve” soil/water/non-target species if one or more of those media are an integral part of the inspection. The finding of a violation is not necessary to be counted for this Measure. One inspection can lead to more than one report under this measure if more than one media is involved.
Q3 - What is the significance of the term “resource”? Is there a difference between “water” and “water resources”, “soil” and “soil resources”?	There is no difference between “water” and “water resources” or “soil” and “soil resources”. The term “resources” was used to be as inclusive as possible. For example, “water” or “water resources” could include wells, ponds, lakes, streams, horse troughs, etc.
Q4 - Would most drift cases “involve” water, soil and/or non-target species?	Yes, most drift cases will involve these impacts and should be reported.
Q5 - When reporting the number of cases identifying violations of label language, must residues be found?	No. This language was chosen so that the measure did not limit a violation to actual residue detections, but also include other evidence that indicates that the pesticide impacted soil, water or non-target species. For example, for soil this may include improper disposal methods or impacts on the soil resource affecting the ability to grow crops.

Measure 4:

Question	Answer
Q1 - When counting the number of inspections or investigations involving label reviews, do we include use inspections or do we just include marketplace or PEI inspections?	Count any inspection where there is a label review, except for a routine review for state registration.
Q2 - When counting the number of inspections or investigations involving violations of registration requirements, should 25b products be included?	Yes. See Performance Measure, footnote 16.