

**Comments and Response to Comments Summary
on FY 2010 Draft OECA NPM Guidance**

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
ISSUE AREA: AIR PROGRAM				
<p>CAA National Priorities: The region requests that OECA provide a definition for the term “compliance evaluation” used in measure PBS-ATX03. Is it the same as defined for the program on p. 18 (i.e. FCEs or PCEs)?</p>	Region 4- Air Enforcement Program	Page 17	<p>The CAA CMS defines compliance evaluations as on-site PCEs, FCEs and investigations. The FY 2010 Commitment PBS-ATX03 (not located in this NPM Guidance) has been edited to read as follows: “Number of compliance evaluations at facilities in the regionally selected MACT universes within the National Problem Areas of LDAR, flares, or surface coating”. (Regions must provide separate commitments for <u>PCEs, FCEs, and investigations</u> in the comment field.). Since the commitment is not located in the NPM Guidance, no change to the Guidance is needed.</p>	No change to the final Guidance.
<p>CAA05: The Region would prefer not to target core investigations by the category of regulations (e.g. NSPS, MACT)</p>	Region 4- Air Enforcement Program	Page 20	<p>For planning, targeting and oversight purposes, it is useful to have the targets for each category of regulation to be able to see how the core air program is being addressed. The regions do have the opportunity to revise targets as necessary even across categories of regulations.</p>	No change to the final Guidance.
<p>CAA11: The Region notes that we will target inspections in 5% of the regulated universe in <u>non-delegated</u></p>	Region 4- Air Enforcement Program	Page 23	<p>Headquarters agrees that the commitment is only for inspections in non-delegated states.</p>	No change to the final Guidance.

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states.				
CMS Oversight: The NPM integrates these into the SRF. Is there a requirement to review these at any other frequency unless deemed necessary by the program?	Region 4 – Air Enforcement Program	Page 25 <i>Program Oversight</i>	With the incorporation of enhanced guidance and file review metrics into SRF reviews, regions are <u>not required</u> to conduct separate in-depth CMS evaluations. However, regions <u>may elect</u> to conduct separate evaluations as they deem appropriate to address state-specific concerns.	No change to the final Guidance.
Title V Air Permits: We would like clarification on the Title V Operating Permits Program section on page 21 of 85 where it talks about reviewing Title V permits consistent with an AED guidance. Is this referring to the AED guidance on reviewing Title V certifications rather than permits when there is an ongoing case?	Region 5, Air and Radiation Division	Page 21	Yes, where Regions have found a deficiency in the Title V certification, they should add that claim to the enforcement action	No change to the final Guidance.
High-risk Criteria: The first high-risk criteria; facilities whose reported RMP worst-case scenario population exceeds 500,000 people is incorrect. The correct number is 100,000.	Region 10	Section IV.I B.4: pg 22	A correction notice was sent out to the Regions correcting this.	The number was corrected to 100,000.
CAA11: The commitment CAA11 requiring that 10% of the inspections be conducted at high-risk facilities is overly restrictive if retained over many years and should be moved to a performance expectation. Region 10 has 46	Region 10	Section IV.I B.4: pg 23	Most other Regions have also conducted inspections at a large number of their high-risk facilities. Headquarters believes that high-risk facilities should be inspected at a greater frequency than other facilities. We expect that when all of the high-risk facilities have been inspected	No change to the final Guidance.

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<p>facilities meeting the high-risk criteria and has already inspected 50% of these facilities. Therefore, if kept as an annual commitment the region will complete high-risk inspections within 6 years based on the Region’s RMP Inspection Prioritization list. Alternatively, the commitment should spread over many years to read “By 2014, the region will have inspected 60% of its high risk facilities.”</p>			<p>once, Regions will begin inspecting them again.</p>	
<p>Air: Region 1 recommends that the draft 2010 OECA guidance recognize the additional workload associated with Regional inspection and enforcement activities in the national priority areas (i.e., NSR/PSD, Air Toxics). Because resources are limited, Regions likely will have to shift resources away from core work in order to meet commitments in national priority areas. As a result, the guidance should examine the role of the Regions vs. states regarding implementation of the core program. The draft 2010 guidance suggests that Regions will be responsible for implementing various portions of the core program. Region 1 believes that it is more appropriate for Regions to</p>	<p>Steven Rapp Christine Sansevero U.S. EPA Region I</p>	<p>OECA Pages 17 & 18</p>	<p>Headquarters expects that regions, in considering the resource demands of core and national priority areas, will identify how they will assign their resources to each part of the enforcement program and reflect their decision in their annual commitments. The establishment of the commitment is where Headquarters and the Regions will discuss how resources affect future performance.</p>	<p>No change to the final Guidance.</p>

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<p>primarily focus on the work that must be conducted in the national priority areas and simply assist the states with core work when appropriate.</p>				
<p>SIPs: Region 1 suggests that the following language be added on page 17: "the enforcement of State Implementation Plans and plans developed and approved under section 111(d) of the Clean Air Act," to the list of Core Programs. Similarly, at the top of page 18, we suggest the addition of SIPs and 111(d) plans to the list of core programs. This is an important addition because in long-standing non-attainment areas for ozone, many of largest, most environmentally significant cases are SIP-related.</p>			<p>The addition of this language will highlight the SIP-related cases and plans.</p>	<p>Language concerning SIPs has been added to the listing of Core Programs.</p>
<p>Core Programs Heading: Near the bottom of page 18, the heading of the section appears to be in error. It appears the language should read: "Compliance Evaluations/Investigations/Stack Tests."</p>			<p>While the section does discuss Compliance Evaluations, investigations and stack testing, HQ believes it is clearer to use a structure that discusses each Air Program.</p>	<p>No change to the final Guidance.</p>
<p>CAA 112(r) Program: Someone with EJ knowledge should be consulted as the criteria for</p>	<p>Region 8, Office of Enforcement, Compliance, and</p>	<p>Section I: Part V. Significant</p>	<p>Headquarters agrees that EJ is an important consideration and will look to incorporating and EJ component in future</p>	<p>No change to the final Guidance.</p>

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classifying "high-risk" facilities is changed for the CAA 112(r) program. EJ considerations should be a part of the criteria.	Environmental Justice	Changes from FY 2009 (Page 6)	guidance.	
CAA 112(r) Program: The draft guidance would require Regions to inspect 5% of the facilities required to submit risk management plans and 10% must be conducted at high-risk facilities. Region 6 has over 2300 facilities subject to the 112(r) program. Of the 2300 facilities the region contains some of the largest and complex chemical and petroleum facilities in the Nation. A single Facility may have a footprint of over 400 acres, operate up to 9 production plants and produce 100 chemical each year. It is unreasonable for a Region to commit to a straight across the board coverage of 5%. In light of limited resources and competing National/Regional priorities the Regions should be given the flexibility to determine their own manageable 112(r) field investigation coverage.	Region 6, 6EN-A David Garcia	CAA 112(r) program Page 6 and page 22	Headquarters recognizes that Region 6, like several other Regions, has a large number of facilities and that it may be difficult to achieve the targets. In past years we have negotiated lower numerical commitments for those Regions and are willing to do so again.	No change to the final Guidance.
State AFS data entry: The draft guidance requires the Regions to "ensure" that 100% of the delegated agencies report the compliance result of all FCEs into AFS within	Region 6, 6EN-A David Garcia	State AFS data entry Page 21	Text revision: Regions should <u>be working to ensure</u> that 100% of the delegated agencies report the compliance results of all FCEs and	Text revision inserted into the Guidance..

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60 days. With limited consequences to state environmental programs it is unreasonable for the Regions to "ensure" timely AFS data input in 60 days. We can encourage and push for a desired 60 day turn around but we can not ensure this date is reported within 60 days.			negotiated PCEs into AFS within 60 days per the AFS ICR, after a completion determination is made. <u>Any deficiencies regarding timely reporting are to be identified in a State's SRF review/report and such deficiencies are to be addressed with appropriate recommendations with identified time frames which will be tracked to resolution in the SRF Tracker System.</u>	
Commitment CAA 17: The draft guidance requires the Regions to enter AFS data if the states fail to do so. In addition this commitment requires the Regions to "ensure" that the data is entered into AFS in a timely manner. As mentioned above we can not "ensure" this commitment be met. In regard to the Regions serving as the source for data entry, this is a long standing issue with Region 6. The Region does not have the resources nor does the Region give this portion of the task such priority. Along with the qualifier "ensure" this portion of the commitment needs to be deleted.	Region 6, 6EN-A David Garcia	Commitment CAA 17 Page 25	As with previous submittals of this comment, HQ's response remains unchanged. The commitment will not be deleted nor altered. Each region, including Region 6, is responsible for ensuring required information is entered into the national database, even if the region must do so itself. If there are deficiencies in state data reporting, the region should be working to ensure the commitment of 100% entry of MDRs. SRF reviews/reports should document a lack of complete, accurate, and timely reporting of MDRs and such deficiencies are to be addressed with appropriate recommendations with identified time frames which will be tracked to resolution in the SRF Tracker System.	No change to the final Guidance.
ISSUE AREA: WASTE, TOXICS AND PESTICIDES				
Imports: Region 3 continues to review NOAs and screen for non-	Region 3; Pesticides and	p.52a	OECA agrees that timely access to CSFs through OPPIN or CITRIX will help	No change to the final Guidance.

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<p>compliant activities and target for inspection. Once identified, potential inspection targets will be scheduled for inspection or other appropriate follow-up. However please note that most of our efforts are geared toward working with importers, brokers, etc. up front to resolve compliance issues before the products are actually brought into the US. Lastly, Region 3 would like to reiterate a concern that it expressed on one or more of the conference calls regarding accessing the CSF in a timely manner to help facilitate reviews of NOAs. Region 3's does not have access to the CSF through OPPIN or CITRIX (apparently, the information is not available to us in OPPIN and CITRIX is not fully operational yet). Timely access will help us address imported pesticides that have unapproved registered sources. We believe this is an area worth investigating, due to the cost savings benefits to the producer to find a cheaper manufacturer of active ingredients and the potential risks associated with those active ingredients if they aren't produced in accordance with the specifications described in the</p>	<p>Asbestos Programs Branch</p>		<p>regions address imported pesticides that have unapproved registered sources. OECA will continue to work with OPP to facilitate progress on providing regions with that timely access through those data systems. In the meantime, OECA will also provide assistance to the regions, as necessary, to facilitate accessing CSF information for any import cases requiring that information from OPP.</p>	

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registration process.				
<p>Core TSCA: Well-targeted Core TSCA inspections are contingent on obtaining timely data from OPPT on PMN submitters, IUR submitters, TSCA Inventory (public and confidential) and so on (e.g., CBITS, CUS). Any Region 5 commitments to do Core TSCA inspections are contingent to timely support from HQ.</p>	Region 5, Land and Chemicals Division	P 47 1. core TSCA	The Core TSCA Enforcement Center is working with OPPT to improve the exchange of information for inspection targeting. HQ will continue to work with Region 5 to assist with providing information.	No change to the final Guidance.
<p>PCBs: Region 5 has been devoting the vast majority of our PCB resources to resolving the issue of PCBs in natural gas pipelines that has been identified in Region 5, and requests recognition of this additional responsibility, and to substitute these inspections and responses to tips and requests for inspections of PCB commercial storage and disposal facilities if resource limitations require substitution. Given the lack of PCB resources to be directed to non-pipeline inspections, Region 5 believes that rather than disperse inspections throughout our six states, it makes more sense to target them within one or two geographic areas per year, and then to develop a</p>	Region 5, Land and Chemicals Division	p. 48 2. PCBs	<p>The issue of inspection commitments for the PCB and AHERA inspection programs was discussed at the recent TSCA Managers meeting (3/23-24). At the time several regional managers volunteered to work with HQ to create a blue print for these inspection programs so there is equitable coverage across the Regions and within States given the current level of FTE and dollars.</p> <p>Oversight inspections are part of good grant management. If the region has conducted oversight inspections in the previous year and believes that one in 2010 is not needed, they can indicate this in the comment field when submitting ACS commitments.</p> <p>Final action will depend on the outcome of the Workgroup's efforts and the ACS commitments may be revised as a result.</p>	No change to the final Guidance at this time.

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communication/press policy to enhance deterrence. We also don't feel that it is a necessary or efficient use of resources to conduct oversight inspections in the three states in the region with which EPA has PCB grants.				
<p>Asbestos: Several years ago, Region 5 disinvested enforcement resources away from asbestos to the Pb program and has no resources to put back into asbestos. Given the lack of asbestos resources, Region 5 believes that rather than disperse inspections throughout our six states, it makes more sense to target them within one or two geographic areas per year, and then to develop a communication/press policy to enhance deterrence. At any rate, 36 LEA inspections are too much for Region 5, given the scarcity of resources. We also don't feel that it is a necessary or efficient use of resources to conduct oversight inspections in the one state in the region with which EPA has an asbestos grant.</p>	Region 5, Land and Chemicals Division	p. 49 asbestos	<p>The issue of inspection commitments for the PCB and AHERA inspection programs was discussed at the recent TSCA Managers meeting (3/23-24). At the time several regional managers volunteered to work with HQ to create a blue print for these inspection programs so there is equitable coverage across the Regions and within States given the current level of FTE and dollars.</p> <p>Final action will depend on the outcome of the Workgroup's efforts and the ACS commitments may be revised as a result.</p>	No change to the final Guidance at this time.
<p>Pesticides: Given the amount of resources dedicated to one case, Region 5 requests some relief on the required</p>	Region 5, Land and Chemicals Division	p. 51 pesticides	OECA will take Region 5's comment into consideration and will follow-up with Region 5 to discuss their proposed plan for engaging in areas targeted for	No change to the final Guidance.

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number of pesticides inspections and case development until that case is settled.			FY2010.	
EPCRA TRI: Region 5 prefers to use our EPCRA 313 enforcement resources to unearth violators who have failed to file. We believe that there uncovering firms that don't report at all more closely meets the mission of the Community Right to Know Act. Therefore, we will continue to request to commit to one data quality inspection a year.	Region 5, Land and Chemicals Division	Pg. 67 – 68 EPCRA TRI	HQ considers non-reporter and data quality inspections very important. The agency relies on data quality inspections to determine whether the facilities are accurately reporting, therefore, HQ would encourages Region 5 do more than one data quality inspection.	No change to the final Guidance.
RCRA: 1 st bullet. This section confuses the reader regarding the frequency of TSD inspections. It should be revised as follows: <ul style="list-style-type: none"> • RCRA 3007(c) requires annual inspections of federal TSDs; • RCRA 3007(d) requires annual inspections of state and local TSDs; and • RCRA 3007(e) requires that other TSDs be inspected no less often than every 2 years 	Region 5, Land and Chemicals Division	P 40 core elements	Accept change.	Requested revisions made in the final Guidance..
RCRA: Change the reference from "2005 BRS" to "2007 BRS" since that updated LQG universe information is now published.	Region 5, Land and Chemicals Division	p. 42 ii. EPA mandated inspections	Change was made in Feb. but not picked up in posted draft NPM Guidance.	Requested revision made in the final Guidance..
RCRA:	Region 5, Land	p. 66 single	Inspections of Federal TSDFs are no	No change to the final

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<p>Are required annual inspections of Federal TSDs captured elsewhere as commitments? Is it included under commitment FED-FAC05?</p>	<p>and Chemicals Division</p>	<p>media inspections</p>	<p>longer subject to ACS (since FY 2008). Annual inspections of all federal TSDFs are required by RCRA Sec. 3007 (c).</p>	<p>Guidance.</p>
<p>RCRA: We would like to propose an additional area where regions and states could focus their compliance efforts--these are defined land areas where smaller generators (SQGs & CESQGs) are concentrated.</p> <p>Many of these smaller generators co-located in specific areas (since they are never or rarely inspected) may pose threats to human health and environment by improper management of hazardous wastes more so than a single LQG generator (inspected every 5 years) or a TSDF (inspected every 2 years).</p> <p>Focusing compliance monitoring efforts on smaller generators located in defined land areas may also be an effective way to address environmental justice issues.</p>	<p>Region 5, Land and Chemicals Division</p>	<p>p. 41, monitoring and regional enforcement</p>	<p>No change necessary. States already have the flexibility to do this (see LQG flexibility guidance identified in the NPM guidance). Federal role should be ensuring state is implementing an appropriate authorized program (including quality inspections at TSDs and LQGs).</p>	<p>No change to the final Guidance.</p>
<p>RCRA: 1st bullet Reference made to the 2005 BRS is incorrect. By 2010, the 2007 BRS</p>	<p>Region 5, Land and Chemicals Division</p>	<p>p. 42 ii. EPA mandated inspections</p>	<p>Comment about changing 2005 to 2007 already made and accepted. Accept other change.</p>	<p>Requested revision made in final Guidance.</p>

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<p>is the correct database for obtaining the LQG universe. Also, there is no such thing as "full enforcement universe for LQGs". The statement in parenthesis should read as, "... (or the LQG universe in RCRAInfo, if data is acceptable)".</p>				
<p>General Comment: The Regions have a major new enforcement program to put into effect, compliance assistance and enforcement for the LRRP Rule. Given the number of children that are Pb poisoned in Region 5, we feel compelled to shift TSCA resources to enforcement of this rule. We request HQ understanding during the ACS bidding process, as we are going to concentrate resources on our Pb program this year.</p>	Region 5, Land and Chemicals Division		<p>We strongly encourage the Region develop and implement an integrated strategy that focuses on identifying causes of hot spots for lead poisoning and eliminating them, relying on the authorities provided for in the combination of rules governing lead issues.</p> <p>No change needed to guidance.</p>	No change to the final Guidance.
<p>AHERA: The workgroup to identify the criteria for a base AHERA inspector program has not been established. Region 7 would like to see this workgroup be established to help facilitate discussion on this issue prior to modifying the NPM guidance.</p>	Region 7	P49 of 85	<p>The issue of inspection commitments for the PCB and AHERA inspection programs was discussed at the recent TSCA Managers meeting (3/23-24). At OECA's request, several regional managers volunteered to work with HQ to develop a strategic approach for these inspection programs so there is equitable coverage across the Regions and States. The Workgroup will be looking at criteria for adequate programs and as a result the ACS commitments may be modified.</p>	No change to the final Guidance.

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			<p>OECA believes a compliance monitoring presence at LEAs is important to ensure protection of school children.</p> <p>ACS commitments may be revised prior to October 2010 depending on the results of the Workgroup.</p>	
<p>AHERA: No Region 7 state is currently conducting AHERA inspections. Six LEA inspections per state would result in inspections at 72 schools throughout the Region. The Region lacks sufficient FTE and travel funding to support this level of effort for AHERA while continuing to meet other national and regional enforcement priorities. We believe that other, innovative, yet protective approaches are likely available to help address this area. We believe that these alternatives should be explored prior to significant modification to the previous NPM language. The Region encourages that last year's language in the NPM guidance and expectations for inspections be maintained until such time as the HQ/Regional workgroup described previously has had the opportunity to formally</p>	Region 7	P50 of 85	<p>The issue of inspection commitments for the PCB and AHERA inspection programs was discussed at the recent TSCA Managers meeting (3/23-24). At OECA's request, several regional managers volunteered to work with HQ to develop a strategic approach for these inspection programs so there is equitable coverage across the Regions and States. The Workgroup will be looking at criteria for adequate programs and as a result the ACS commitments may be modified. OECA believes a compliance monitoring presence at LEAs is important to ensure protection of school children.</p> <p>ACS commitments may be revised prior to October 2010 depending on the results of the Workgroup.</p>	No change to the final Guidance.

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convene, evaluate, and formulate recommendations for a path forward.				
<p>Potential focus areas: The guidance discusses a potential focus area of Return/Collection Centers. We understood that this focus area was to be modified for 2010 to address 100 percent repack facilities. We believe the 100 percent repack facilities are a better focus area and encourage that it be adopted in place of the Return/Collection Centers.</p>	Region 7		<p>Targeting 100% repackagers is a focus for FY2010. The guidance allows regions committed to engage in this focus area for FY2009 to complete their investigative efforts on big-box stores utilizing return, recycling and collection centers in FY2010 if they are unable to complete their investigative efforts in FY2009. We also asked that regions target inspections at major distribution warehouses used by the larger agricultural or consumer products registrants. OECA will clarify the guidance to better reflect that the FY2010 focus is primarily on the targeting of 100% repackagers and major distribution centers. To facilitate targeting inspections at 100% repackagers, OECA will work with OPP to identify companies that may be repackaging damaged pesticide products that are received from retailers.</p>	Requested Revision Made in final Guidance.
<p>Core TSCA: The guidance indicates that Regions should review and follow-up on, as appropriate, disclosures submitted under the “Audit Policy.” Disclosures received by <u>minimally-invested</u> regions may be forwarded to OECA. The guidance goes on to suggest that Region 4 is not a</p>	Region 4 – Air Enforcement Program	Page 47	<p>HQ does receive Audit Policy disclosures however HQ does not plan to change the NPM guidance.</p>	No change to the final Guidance.

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minimally-invested Region. Therefore, it appears that the guidance is saying that Region 4 must review and follow-up on disclosures. However, it has been the Region’s policy to submit disclosures to HQ for review and follow-up, and HQ has been agreeable to this process. The guidance needs to be clear that non-minimally invested Regions may send disclosures to HQ for review and follow-up.				
Core TSCA: It appears that the Core TSCA Enforcement Center may be disinvesting in its activities. If this is the case the guidance needs to reflect this and identify the new responsible entity.	Region 4 – Air Enforcement Branch	Page 47	The Core TSCA Enforcement Center is not disinvesting in CORE TSCA. The Denver site is being collocated with the Washington, D.C. office.	No change to the final Guidance.
TSCA AHERA inspections: The FY10 guidance adds a reference to conducting inspections in Indian country. In previous years, inspections in tribal schools were captured under the tribal national priority measures. Should that continue to be done, or should inspections in tribal schools be reported here under ASB01?	Region 4 – Air Enforcement Branch	Pages 49-50	For tribal schools inspected as part of the national priority measure, continue to include those LEA inspections under the national priority measure.	No change to the final Guidance.
FIFRA Monitoring & Enforcement (Imports): For imports, the guidance indicates that “Regions should conduct targeted	Region 4 – Air Enforcement Branch	Page 52	OECA will clarify the write-up to state that although it is anticipated that the Regions will be a significant source of inspections and enforcement for this focus	Guidance amended to discuss State activities in the monitoring and enforcement of FIFRA imports program.

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inspections,” without mentioning any role for state lead agencies (SLAs). Please clarify that these targeted inspections in the imports arena are not strictly a Federal function, but may also be conducted by state inspectors holding federal credentials.			area, States may become involved through negotiated grant inspection commitments and through Region-to-State referrals to monitor import compliance. States should be made aware of EPA’s strong interest in import compliance and be encouraged to cooperate and collaborate with EPA when situations warrant.	
Toxics: Region 1 does not agree with the draft 2010 guidance requirement of mandatory field use of the tablet computer to conduct PCB inspections and prepare inspection reports.	Nancy Barmakian Sharon Hayes U.S. EPA Region I	OECA Page 48	OECA believes the adoption of the use of Tablets and related software for preparing for and conducting inspections and generating inspection reports provides improved efficiencies to conducting inspections, extremely important given the limited resources for this program. All other regions are beginning to use the Tablet. It is unclear why Region 1 does not agree to pilot software that has been specifically developed for TSCA PCB inspections. If the Region is willing to commit to begin using the Tablet during 2010, we can agree to phasing in its use during 2010.	Language amended in the final Guidance to say that all regions are required to begin phasing in the use of the Tablet and related software.
Resources for “Small” Enforcement Programs: Region 5 looks forward to participating in the discussion taking place between OECA and the Regions in regards to targeting the minimal resources allocated to the relatively small TSCA enforcement programs. For instance, several years ago,	Region 5, Land and Chemicals Division		The issue of inspection commitments for the PCB and AHERA inspection programs was discussed at the recent TSCA Managers meeting (3/23-24). At OECA’s request, several regional managers volunteered to work with HQ to develop a strategic approach for these inspection programs so there is equitable coverage across the Regions and States.	No change to the final Guidance at this time.

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<p>Region 5 disinvested enforcement resources away from asbestos to the Pb program and has no resources to put back into asbestos. Given the lack of asbestos resources, Region 5 believes that rather than disperse inspections throughout our six states, it makes more sense to target them within one or two geographic areas per year, and then to develop a communication/press policy to enhance deterrence. At any rate, 36 LEA inspections are too much for Region 5, given the scarcity of resources. We also don't feel that it is a necessary or efficient use of resources to conduct oversight inspections in the one state in the region with which EPA has an asbestos grant.</p> <p>There are similar discussions that need to take place about CORE TSCA and EPCRA 313 (not a TSCA program) inspections. Given the paucity of resources and the need to have a strong national presence for deterrence purposes, there needs to be a national discussion on what the minimal level of resources is necessary to accomplish our objectives, and how to be smart in the use of those resources so as to create the most</p>			<p>As a result of this Workgroup's recommendations, the ACS commitments may be revised prior to October 2010.</p> <p>Oversight inspections are part of good grant management. If the region has conducted oversight inspections in the previous year and believes that one in 2010 is not needed, they can indicate this in the comment field when submitting ACS commitments.</p> <p>Action depends on the outcome of the HQ/Regional Workgroup to review these inspection programs and identify a strategic approach for these inspection programs.</p>	

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deterrence possible. We think OECA is well aware of the need for this dialogue, and we look forward to partaking in the discussion.				
AHERA: The work group that is being established to identify the criteria for a base AHERA inspection program should have a person knowledgeable about EJ or have a reviewer who is knowledgeable about EJ so that EJ issues are a part of the criteria.	Region 8, Office of Enforcement, Compliance, and Environmental Justice	Section IV: Part III. C. Toxic Substances Control Act (TSCA) Core Programs 3. TSCA Asbestos Performance Expectation (Page 49)	<p>HQ agrees with the Region’s comment and invites the Region’s manager(s) to participate in the workgroup.</p> <p>Final action will depend on the outcome of the Workgroup’s efforts and the ACS commitments may be revised as a result.</p>	No change to the final Guidance at this time.
EPCRA 304/311/312: We agree that non-filers should be targeted for EPCRA 311/312 (Tier II reporting) inspections. However, inspection targeting based on national/regional priorities and/or chemical quantity or proximity to population centers does not make sense unless it’s only in the context of identifying EPCRA 311/312) non-filers. Tier II forms are generally not evaluated on-site for quality and all late release reports (ECPRA 304 CERCLA 103) are inspected regardless of criteria.	EPA Region 10	Section V.C.2; pg 68	Regions may choose to target for EPCRA 304/CERCLA 103 inspections using the national/regional priorities, etc. This approach is encouraged but not required. If Region 10 is confident in their targeting scheme, then they should continue with their current approach.	No change to the final Guidance.

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<p>PCB: Required use of tablet computers for PCB inspections: please clarify that Regions will use the provided tablet computers only to the extent practicable and feasible. R10 has several PCB inspectors and OECA has provided only 2 tablets and no training so far. We are also experiencing delays in using the equipment due to lack of warranty and software licenses provided.</p>	EPA Region 10	Section III.C.2; pg 48	HQ will take steps to ensure that the 5 tablets are provided prior to 2010. We understand that the region is working through some IT issues. HQ is amenable to a “phased-in” approach to collect field data and prepare inspection reports.	Guidance was amended to allow a “phased-in” approach to using the Tablets.
<p>EPCRA 313: Region 10 would like to have any data quality inspections to be part of the “total” number of inspections (EPCRA02) and not a separate commitment (EPCRA01) to allow for flexibility as we conduct multimedia inspections. The DQ inspections are more complex and time consuming so we request that we can substitute DQ inspections for non-reporter inspections toward a total commitment number (as we used to do before the ACS system). To capture the number of data quality inspections, EPCRA01 can be changed to a reporting measure and not a commitment measure.</p> <p>Also, we do not have the resources to conduct the number of</p>	EPA Region 10	Section V.C.; pg 68	HQ will continue to have EPCRA01 and EPCRA02 inspection commitments separate. Region 10 should let HQ know what they can commit for the FY. HQ can consider discussing the issue further at national meetings and conference calls. We are aware of Region 10’s difficulties with resources and are willing to work with them.	No change to the final Guidance.

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>inspections proposed. We agree that data-quality inspections are important but the commitment should be “a minimum of one” not a firm number of four. We propose a “minimum of 10 inspections” for a total commitment that will be negotiated based on resources, compliance assistance activities conducted, and self-disclosure activity.</p>				
<p>Asbestos: The workgroup to identify the criteria for a base AHERA inspector program has not been established. Regions have varying AHERA inspection capacity based on funding. Region 10 would like to see this workgroup be established and will participate.</p>	EPA Region 10	Section III.C.3; pg 49	<p>The Workgroup is being formed and will begin to meet shortly. Region 10 has agreed to participate on the Workgroup to review this issue and develop criteria for a base program.</p> <p>ACS commitments may be revised prior to 2010 depending on the results of the Workgroup.</p>	No change to the final Guidance.
<p>Asbestos: Region 10 does not have the resources to manage the workload for covering 6 LEAs per state (which translates to 72 schools in Region 10’s four states).</p> <p>Also, we do not believe school inspections are as protective as auditing the training providers since auditing has a larger impact to the targeted population. We recommend a commitment measure that includes audits of training</p>	EPA Region 10	Section III.C.3; pg 50	<p>The Workgroup will be looking at criteria for adequate programs and as a result the ACS commitments may be modified. OECA believes a compliance monitoring presence at LEAs is important to ensure protection of school children.</p> <p>ACS commitments may be revised prior to 2010 depending on the results of the Workgroup.</p>	No change to the final Guidance.

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
providers as well as our compliance assistance activities (which can count LEA's reached to show a Regional presence).				
<p>Lead Based Paint Program: Region 10 agrees with the need to establish a strong enforcement program concerning RRP. However, the RRP universe is much larger than the other lead programs. There is an urgent need for a proper enforcement presence in order for this rule to be effective. We do not believe that a shift of 10% of resources will be adequate. We believe that additional FTE or SEE resources will be needed to fully enforce this rule in the Region.</p>	EPA Region 10	Section III.C.4;pg 50	<p>HQ recognizes the need for adequate resources to run an effective LBP program. However, until the budget process provides additional resource opportunities for the program, it is important that we utilize existing resources as effectively and efficiently as possible. Regions are therefore encouraged to develop a regional approach that best balances existing regional resources with the need to increase compliance and enforcement activity in RRP. Creative targeting to incorporate RRP with other LBP compliance monitoring activities is encouraged. Emphasis should also be placed on locations with known EBLL children, whenever possible.</p>	No change to the final Guidance.
ISSUE AREA: FEDERAL ACTIVIES				
<p>Joint Projects: Participation with Chinese Agencies on Joint Projects Refers to joint projects with Chinese Agencies on "...environmental law development and enforcement, environmental impact assessment, emergency response, regional environmental</p>	Region 5, Land and Chemicals Division	Page 59, c	<p>Region 5, along with Regions 3 and 9 was identified by OIA as regional partners in Capacity Building with China. Under Annex 5, Region 5 is called upon as a team member, contributing as appropriate to information sharing with China, and, in particular: 1) the Deputy Regional Administrator is invited to attend the annual Working Group Meetings to be</p>	No change to the final Guidance.

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>management, and compliance with environmental requirements for traded products.” It specifically cites Region 5’s involvement. However, Region 5 is unclear what is involved other than one enforcement case which is currently being developed regarding exports of CRT’s. Please provide clarification of what is expected.</p>			<p>held in either Washington D.C. or Beijing on a rotating role among the three Regions; 2) Region 5 co-leads Project E on Regional Environmental Management (with Region 3) based on a mutually agreed upon two year work plan and implementation plan updated annually. Project E includes twinning with two of China’s six Regional Environmental Supervision Centers with which Region 5 is aligned --specifics to be determined in cooperation with OIA as funding and work programs are developed, 2) host an extended 3 month study tour for 1-2 Chinese professionals most likely those coming from the identified twinning regions, 3) host 1-2 visiting delegations on issues related to enforcement, EIA, legislation, emergency response and/or regional management, itinerary to be coordinated within the Annex 5 team, 4) actively participate in Project A3, lead by Region 3, which focuses on enforcement and enforceable requirements for the coal fired power plants and pulp and paper sectors which will include participation on training teams going to China, contributing information on US requirements and practice, and commenting on research reports comparing US and Chinese practice.</p>	
<p>Movement of Haz Waste:</p>	<p>Region 5, Land</p>	<p>Page 58,</p>	<p>OFA and ORCR are currently working on</p>	<p>No change to the final</p>

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>The 2nd second bullet regarding trans-boundary movement of hazardous waste refers to enhancing capacity building with Canada and Mexico for trans-boundary compliance monitoring.</p> <p>Region 5 believes that this can be accomplished through a combination of electronic data mining, inspections of destination facilities and credible border presence. However, in the case of hazardous waste, data mining is hampered by the need to enhance data systems and the limitations on data collected by other agencies on exports. Furthermore, existing resources for reviewing data and conducting both destination facility and border inspections are stretched thin. Making significant progress in this area will require additional FTE resources and financial resources as well as data system enhancement.</p>	<p>and Chemicals Division</p>	<p>Section 2</p>	<p>a pilot project for the electronic exchange of RCRA import/export data with Mexico and Canada under the auspices of the Commission for Environmental Cooperation (CEC). The goal of this project is to eliminate the paper transmission of import/export documentation and make it 100% electronic. This should enhance our ability to conduct data searches of our database for import/export documentation.</p> <p>In addition, OFA and ORCR are developing a new database for RCRA import/export documentation. The new system, Waste Import Export Tracking System (WIETS), will replace the existing WITSnet and have enhanced capability for query searches of data stored in the system. In WIETS, Regional Coordinators will also have access to review export data from their Regions, which should provide them with a wider view of import/export activities in their Regions.</p> <p>The level of FTE resources in the Regional Offices and Headquarters that will be adequate to support enhanced compliance monitoring regarding transboundary movements of hazardous waste needs to be considered. OFA</p>	<p>Guidance.</p>

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
			<p>expects that the electronic transmission of notification information and the eventual comparative analysis of data electronically in WIETS will eliminate much of the current manual data entry and analysis of data and yield FTE dividends that can be reinvested in compliance monitoring activities, and related compliance assistance and case development.</p>	
<p>Customs and Border Protection: The 3rd bullet refers to improved performance of joint responsibilities with Customs and Border Protection. Region 5 agrees there is much that can be accomplished by working with CBP. The interagency agreement between the EPA and CBP will hopefully facilitate this cooperation. However, in the short term, this agreement has served to have CBP want to centralize control of communications between the two agencies which creates barriers and functional impediments. Hopefully, lines of communication will be worked out to allow more direct staff to staff flow of information so that information can be exchanged in a more timely fashion.</p>	<p>Region 5, Land and Chemicals Division</p>	<p>Page 58 – Section 2</p>	<p>See next comment below.</p>	<p>No change to the final Guidance.</p>

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>Import/Export: The 2nd paragraph, Import/Export Program highlights some of the barriers to free flow of communications with CBP. It states in part “...must submit all other requests and inquiries for CBP to the liaison official identified by CBP for this purpose.” However, in practice, it is difficult to determine who the liaison official is to get needed information.</p>	<p>Region 5, Land and Chemicals Division</p>	<p>Page 59, Section 2. c</p>	<p>Customs and Border Protection (CBP) has requested that all offices of EPA channel requests for their participation in <i>any interactions that are not shipment-specific</i>, which include but are not limited to participation in meetings, training and field tests as well as requests for information, through the following liaison: Virginia McPherson (Virginia.mcpherson@dhs.gov, 202-863-6563) in CBP Headquarters, in the Interagency Requirements Branch, Office of International Trade. Customs officials at the ports may communicate directly with EPA regarding specific containers/shipments, and EPA may respond directly to them.</p>	<p>Language was added to the final Guidance.</p>
<p>NEPA: For a more complete program description, we suggest you add the following in red: “Prepare environmental analyses (EISs or EAs) and make categorical exclusion determinations for new source National Pollutant Discharge Elimination System (NPDES) permits, for states/tribes without authorized NPDES programs; off-shore oil and gas sources, including permits for deepwater ports, EPA laboratories, and facilities; and Clean Water Act wastewater treatment plant grants.”</p>	<p>Region 5, OECA</p>	<p>Page 57</p>	<p>Accept the recommended additions.</p>	<p>Revisions were made to the final Guidance.</p>

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>Also, "Prepare environmental analyses (EISs or EAs) and make categorical exclusion determinations for Special Appropriation grants (including the Colonias Wastewater Construction and Project Development Assistance programs) for wastewater, water supply, and solid waste collection facilities; Border Environment Infrastructure Fund for the US/Mexico Border Environment Cooperation Commission projects; and reviews conducted under the "voluntary NEPA policy.""</p>				
ISSUE AREA: FEDERAL FACILITIES				
<p>Federal Facilities: Federal Prison Strategy Actions: 3rd paragraph, delete #3 "... (3) continue to conduct inspections of BoP facilities". Same as (1).</p>	<p>Region 5, Land and Chemicals Division</p>	<p>Page 63</p>	<p>Not certain what was meant by this comment but BoP facilities should continue to be inspected even as we try to negotiate an audit agreement with BoP.</p>	<p>No change to the final Guidance.</p>
<p>Federal Facilities: Region 5 requests that HQ definitively open up the areas of RCRA C and prisons for possible inspections, even if those areas are not ultimately considered integrated strategies. To limit our inspections to stormwater and UST, and then to</p>	<p>Region 5, Water Division</p>	<p>Page 66</p>	<p>Prisons and some RCRA areas (pending continuing investigation) will be either Integrated Strategies or continue as exploratory areas in FY 2010. As such, inspections at these facilities will count toward the Region's ACS commitment.</p>	<p>No change to the final Guidance.</p>

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
limit the UST inspections to 3, places undue burden on the stormwater program.				
<p>FED-FAC01: Due to the shrinkage in funding for assistance activities, there will be inherent difficulty in meeting our commitment to provide assistance to the regulated community on a formal basis. We are fortunate in Region 4 to have an active Army regional office which supports a well-attended annual conference. We do not yet have a regular partner for a similar conference for civilian agencies, so resources developed by others and shared are valuable for our implementation of this commitment. The potential for revisiting this measure in the event of resource constraints is also important, as we would expect to have difficulty meeting the measure without added funding.</p>	Region 4 – Office of Environmental Accountability	Page 65	As in the past, FFEO and the Regions will have the opportunity to discuss any changes in the commitments necessitated by particular Regional conditions during the mid-year assessment process.	No change to the final Guidance.
ISSUE AREA: WATER PROGRAM				
<p>NPDES Program: R4 has concern with potential (unknown) workload associated with the possibility of 8 new commitments in FY 2011. Region 4 desires to work with OECA on the development of the specific measures for the 8 CMS commitments.</p>	Region 4 – Water Enforcement Branch	Page 30	OECA welcomes regional input on developing new CMS commitments for FY 2010. CAMPD believes that FY 2011 is the appropriate time frame to expand the ACS commitments to reflect implementation of the 2007 Compliance Monitoring Strategy beyond the current focus on promoting the planning annual	No change to the final Guidance.

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
			CMS process with the states. We are working to develop a data tool and select logic to assist the regions in projecting and measuring the new planned commitments for FY 2011.	
Reporting and Measurement: R4 is concerned that data systems be in place to handle reporting of the additional 8 commitments effective in FY 2011. Manual reporting of these additional commitments is not feasible.	Region 4 – Water Enforcement Branch	Page 31	Select logic is being prepared to pull most data from the data systems. Only where data is not in the systems would manual reporting of aggregate numbers be considered.	No change to the final Guidance.
Core Water Program: In regard to the CMS plans, it is unclear what is operable in what year. Here’s one example on Page 30: “Round 2 State Review Framework evaluations of Elements 4 and 5 that are conducted in 2010...” Is this referring to evaluations conducted in 2010 that cover 2009? Or is it rather evaluations conducted in 2011 that cover 2010?	Region 5, OECA	Pages 29-30	Round 2 SRF reviews conducted in FY 2010 will utilize data on activities in 2009.	No change to the final Guidance.
Commitment CWA07: By December 31, 2009, provide one specific Compliance Monitoring Strategy (CMS) plan for each state in the region. The plan should provide universe information for the CMS categories; sub-categories covered by the CMS and combined	Barbara McGarry U.S. EPA Region 2	p. 31	CAMPD is working with ETDD to develop a data tool and select logic that we expect will be available in the first quarter of FY 2010 to enable OECA and the regions to pull data regarding state performance compared to the state CMS plan or the national CMS policy.	No change to the final Guidance.

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>EPA and state expected accomplishments for each category and subcategory. The plan should identify trade-offs made among the categories utilizing the flexibility designed into the CMS policy. At end of year provide for each state a numerical report on EPA and state inspection plan outputs, by category and subcategory. OECA will pull available data from the data system to compare performance vs the State CMS as possible.</p> <p>OLD By October 31, 2008, provide one specific Compliance Monitoring Strategy (CMS) plan for each state in the region. At mid-year and EOY provide for each state a numerical report on combined EPA and state inspection plan outputs by category and sub-category.</p>				
ISSUE AREA: TRIBAL PROGRAM				
<p>Tribal Solid Waste Program: On Page 69 of the NPM Guidance, Region 5 agrees with the importance that OECA is placing on "...improving solid waste management compliance, investigating and reducing threats posed by open dumps in Indian Country..."</p>	Region 5, Land and Chemicals Division	Page 69	OECA appreciates the support for the plan to retain the National Indian country Priority focus on, among other things, improving solid waste management compliance and investigating and reducing threats posed by open dumps in Indian country. OECA recognizes that we may need to revisit Regions' commitments if sufficient funds are not	No change to the final Guidance.

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>We appreciate the OECA National Indian Country Priority EPM funds that have been made available to the Region 5 Tribal Solid Waste Program in past fiscal years. However, in FY2009, these funds were cut more than 70% and this will hinder our ability to ensure effective Tribal Solid Waste Management and compliance. The FY2010 OECA NPM Guidance continues to support the Tribal Priority area of Solid Waste Management Compliance and utilizing OECA's EPM funds to support the priority giving precedence to funding 'circuit riders who provide on-site compliance and technical assistance." Region 5 also supports this priority and encourages OECA to restore the previous funding levels of the OECA National Indian Country EPM Funds.</p>			available to support these activities.	
ISSUE AREA: COMPLIANCE ASSISTANCE				
<p>Compliance Assistance: The OECA draft 2010 National Program Manager guidance compliance assistance (CA) program description does not establish compliance assistance as a strong national program (see page 9, for example which references</p>	<p>Thomas D'Avanzo Mary Dever-Putnam U.S. EPA Region I</p>	<p>OECA Pages 9 & 10</p>	<p>Additional language was added to page 9 to further articulate the expectation that each Region maintain strong leadership for the CA program as well as a strong infrastructure for the program. Additional language regarding emphasizing the role of CA in the</p>	<p>Additional language was added to the final Guidance.</p>

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<p>regional program infrastructure). There are general references to CA throughout the document, but there is not much depth in those descriptions. Region 1 recommends that the guidance be revised to include more specific compliance assistance elements in the final guidance. Region 1 advocates the development of more substantial goals and CA outcomes across all OECA national priorities including but not limited to Air Toxics/Surface Coating and Stormwater/Sand and Gravel. We have been able to account for measurable performance changes for some priority CA work here in Region 1, beyond activity focused measurement. Good and meaningful outcomes, including compliance improvements, come from the synergistic effects of a variety of compliance assurance activities – not from a single action. Thus, Region 1 recommends that OECA involve Regions in establishing ACS commitments for national priority areas that go beyond activity measurement (e.g., “100% outcome reporting for workshops, visits” and “Reach 100% of a universe with a direct</p>			<p>compliance assurance program was added throughout the document to address concern that descriptions lack depth (see pages 9-11; 18; 24; 27). More detailed expectations could be appropriate for a specific CA policy document, rather than the NPM Guidance which is quite diverse and long, and does not provide much depth for any areas.</p> <p>Goals and outcomes for OECA National Priorities are developed on a priority-by-priority basis and cannot be modified in this Guidance. OECA is working with the Governing Board to establish a clear and strong role for compliance assistance in National Priorities, where appropriate, consistent with OECA’s overall support for integrated strategies, which rely on a combination of tools to address the problem.</p> <p>OECA is re-evaluating the measures for the CA program and OC is currently leading a workgroup, with Regional participation, to identify potential additional, meaningful measures for compliance assistance activities.</p>	

Comment from regions, state, tribe, or other stakeholder	Commenter (s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
mailing”).				
ISSUE AREA: GENERAL COMMENTS				
<p>General Comment: It would be more helpful to get ACS commitment information in the guidance for the national priorities. The details for the priorities often come very late in the process when it is too late to comment on them.</p>	Region 5, OECA	Overall	The Strategy Implementation Teams (SITs) want to see the mid-year results of the current year (FY 2009) before initiating the commitment levels for the following year (FY 2010). OC recognizes that it would be beneficial to the Regions to provide this information earlier and through the NPM Guidance and will consider options to get the ACS commitment information out earlier.	No change to the final Guidance.
<p>State-Federal Workload: In this climate of budget cuts and workload challenges, it is important to emphasize EPA’s willingness to work collaboratively with the states to develop agreements that outline achievable priorities and commitments and help address state-federal workload overall.</p>	OCIR		The EPA/State Relations section of NPM Guidance does acknowledge issues that States may have and that EPA will work collaboratively with states.	No change to the final Guidance.