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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 156 and 165

[OPP–2004–0049; FRL–7355–3]

RIN 2070–AB95

### Standards for Pesticide Containers and Containment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; partial reopening of comment period.

**SUMMARY:** EPA is reopening the comment period for the following proposed rule to solicit public input on issues or technology relating to the proposed requirements that would not have been available or could not have been addressed in comments submitted during previous public comment opportunities. On February 11, 1994, EPA published a proposed rule in the **Federal Register** proposing container design and residue removal requirements for refillable and nonrefillable pesticide containers and standards for pesticide containment structures (59 FR 6712). Subsequently, EPA issued a supplemental notice in the **Federal Register** partially reopening the comment period on several specific issues (64 FR 56918, October 21, 1999). Because significant time has passed since the publication of the proposed rule and the supplemental notice, EPA believes it is appropriate to reopen the comment period prior to preparing a final rule. Specifically, EPA is reopening the comment period to obtain public input on the proposed requirements which would not have been available or could not have been addressed at the time of either the notice of proposed rulemaking in 1994 or the supplemental notice in 1999.

**DATES:** Comments, identified by docket ID number OPP–2004–0049, must be received on or before August 16, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP–2004–0049, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- **Agency Website:** <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and

comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- **E-mail:** Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP–2004–0049.

- **Mail:** Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0049.

- **Hand Delivery/carrier:** Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0049. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to docket ID number OPP–2004–0049.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the [regulations.gov](http://www.regulations.gov) websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information

about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7). For additional instructions, go to Unit I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Fitz, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7385; fax number: (703) 308–3259; e-mail address: [fitz.nancy@epa.gov](mailto:fitz.nancy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

The Agency included in the proposed rule and the supplemental notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials, including the paper-only docket for the proposed rule and the partial reopening of the comment period, through the docket facility (OPP–190001). A frequently updated electronic version of 40 CFR part 180 is

available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

## II. What Action is EPA taking?

This document reopens the public comment period for the rulemaking titled "Standards for Pesticide Containers and Containment," which was proposed on February 11, 1994 (59 FR 6712). In that document, EPA sought comment on proposed regulations for pesticide container design and residue removal and for containment structures at pesticide storage and container refilling operations. Because significant time has passed since the proposed rule in 1994 and a supplemental notice in 1999 (64 FR 56918, Oct. 21, 1999), EPA is hereby reopening the comment period for an additional 45 days. While EPA has attempted to stay current on developments in pesticide container and containment structure policies, regulations, technology and practices, the Agency believes that it is appropriate to solicit input from the regulated community, state regulators and others to ensure that we are fully aware of the current state of the pesticide container and containment universe before finalizing the pesticide container and containment regulations.

The Agency has reviewed and carefully considered all of the public comments submitted in response to the proposed rule and the supplemental notice. Accordingly, the Agency is not soliciting comments which are essentially repetitions of those comments or which could have been raised at the time of either of the previous notices. In addition, EPA will not consider submissions that are related solely to policies, regulations and pesticide market conditions and practices that existed in 1994 and 1999. Similarly, EPA is not interested in receiving restated comments about which pesticide products should be exempted from the pesticide container regulations.

EPA is soliciting public input on any policies, market practices, technology or other issues relating to this rule's requirements which would not have been available or could not have been addressed at the time of either the proposed rule in 1994 or the supplemental notice in 1999. Three examples of the types of issues which could be addressed in comments to this notice are described below.

### A. State Containment Regulations

Since the Agency proposed the bulk containment standards in 1994, 19 states have been implementing state containment regulations. Some states

had their own containment regulations before 1994, and have modified and improved them over the years. These states (with the longest standing regulations) had the majority of the bulk storage facilities within their borders, and recognized the need for regulation to prevent pollution from bulk storage and refilling operations. The Agency has carefully considered all comments regarding containment that were submitted on the 1994 proposed requirements. The 1999 supplemental notice did not discuss changes to the proposed containment standards. However, the additional 10 years of experience in implementing containment regulations may have led to new suggestions, observations, problems, market practices or other data submissions by state regulators, registrants, dealers, commercial applicators, engineers, other businesses, or the public. For example, the additional experience in designing and building containment structures and inspecting, operating, and maintaining bulk storage and refilling facilities could have changed commenters' opinions about specific proposed containment requirements. As another example, EPA has received anecdotal reports that bulk storage on farms, which was very rare if not nonexistent when the regulations were proposed, is becoming more common and may present a risk to the environment. Comments and data on the proposed containment standards that could not have been anticipated in 1994 because the comments are based on the additional years of experience with state containment regulations are an example of comments that would be appropriate to submit.

### B. Pesticide Container Recycling

EPA also believes that the experiences and results of pesticide container collection and recycling programs over the past decade could lead to new observations, data, and comments on the proposed container standards. The Ag Container Recycling Council (ACRC) is a non-profit organization that promotes and supports the collection and recycling of plastic pesticide containers in the United States. The collection and recycling programs conducted by the ACRC grew significantly during the past decade from the developmental stage when the proposed regulations were being developed in the early 1990's to collecting over 6.6 million pounds of plastic containers in each of the past few years. The ACRC, pesticide registrants, pesticide container recyclers, State extension agents and State and local regulators have had

multiple years to observe end users' rinsing practices, the cleanliness of containers, the rate of rejecting containers and other container-related issues that could lead to comments on the proposed container requirements that are different from when the regulations were proposed.

### C. Plant-Incorporated Protectants

The regulations for plant-incorporated protectants in 40 CFR parts 152 and 174 were finalized in the **Federal Register** on July 19, 2001 (66 FR 37771). A plant-incorporated protectant is a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. As explained in the preamble to the final rule for plant-incorporated protectants (66 FR 37774), "[p]lant-incorporated protectants are primarily distinguished from other types of pesticides because they are intended to be produced and used in a living plant. This difference in use pattern dictates in some instances differences in approach." Plant-incorporated protectants are not sold and distributed in containers as distinct substances (e.g., liquids, solids or gels) like other pesticides; they are distributed as part of the seeds or plants. Therefore plant-incorporated protectants do not have containers like most pesticides.

EPA did not specifically mention plant-incorporated protectants in either the proposed rule or the supplemental notice because there were either no registrations for these products or they were uncommon at that time; these types of products are relatively new to the marketplace. In addition, the plant-incorporated protectant regulations in 40 CFR part 174 were finalized in 2001 after the container/containment proposed rule and supplemental notice were published. Comments relating to regulating the containers, container-related labeling or containment of plant-incorporated protectants, and other types of pesticides that may be in similar situations, are the kind of input that would be appropriate to submit in response to this notice.

## III. What is the Agency's Authority for Taking this Action?

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) sections 19(e) and (f) grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for "the design of pesticide containers that will promote

the safe storage and disposal of pesticides." The regulations must ensure, to the fullest extent practicable, that the containers:

1. Accommodate procedures used for removal of pesticides from the containers and rinsing of the containers.
2. Facilitate safe use of the containers, including elimination of splash and leakage.
3. Facilitate safe disposal of the containers.
4. Facilitate safe refill and reuse of the containers.

FIFRA section 19(f) requires EPA to promulgate regulations "prescribing procedures and standards for the removal of pesticides from containers prior to disposal." The regulations may:

1. Specify, for each major type of pesticide container, procedures and standards for, at a minimum, triple rinsing or the equivalent degree of pesticide removal.
2. Specify procedures that can be implemented promptly and easily in various circumstances and conditions.
3. Provide for reusing, whenever practicable, or disposing of rinse water and residue.
4. Coordinate with requirements imposed under the Resource Conservation and Recovery Act (RCRA) for rinsing containers.

Section 19(f) provides that EPA, in its discretion, may exempt products intended solely for household use.

Section 19(h), titled "Relationship to Solid Waste Disposal Act," specifies that nothing in section 19 shall diminish the authorities or requirements of RCRA. It also exempts certain antimicrobial pesticides from the container regulations:

A household, industrial, or institutional antimicrobial product that is not subject to regulation under the Solid Waste Disposal Act ... shall not be subject to the provisions of subsections (a), (e), and (f), unless the Administrator determines that such product must be subject to such provisions to prevent an unreasonable adverse effect on the environment.

#### IV. Do Any Statutory and Executive Order Reviews Apply to this Action?

This notice neither proposes nor takes final action regarding any substantive requirements and is procedural in nature. This notice merely opens up the docket for further comments on a rule that has already been proposed. Therefore, it is not subject to the statutory and executive order reviews generally applicable to proposed and final rules.

#### List of Subjects in 40 CFR Parts 156 and 165

Environmental protection, Packaging and containers, Pesticides and pests.

Dated: June 2, 2004.

**Susan B. Hazen,**

*Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*  
[FR Doc. 04-14463 Filed 6-29-04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 170

[OPP-2003-0169; FRL-7354-6]

#### **Pesticide Worker Protection Standard; Glove Liners, and Chemical-Resistant Glove Requirements for Agricultural Pilots; Notification to the Secretary of Agriculture**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification to the Secretary of Agriculture.

**SUMMARY:** This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture a draft final rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft final rule would create greater flexibility in requirements of the 1992 Worker Protection Standard related to the use of gloves by workers and applicators.

**ADDRESSES:** EPA has established a docket for this action under Docket ID number OPP-2003-0169. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Donald Eckerman, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-

5062; e-mail address: [eckerman.donald@epa.gov](mailto:eckerman.donald@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general. It simply announces the submission of a draft final rule to the United States Department of Agriculture (USDA) and does not otherwise affect any specific entities. This action may, however, be of particular interest to agricultural employers, including employers in farms as well as nursery, forestry, or greenhouse establishments, who are subject to the Worker Protection Standards. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. Please note that the draft final rule is not currently publicly available. It will only become publicly available when the final rule is signed, at which time it will publish in the **Federal Register**. A frequently updated electronic version of 40 CFR part 170 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

##### II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include the comments of the Secretary, if requested by the Secretary, and the Administrator's response to those comments in the final rule when published in the **Federal Register**. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15-day period.