Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 122, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new temporary safety zone § 165.T11–033.

§ 165.T11–033 Safety zone; BWRC '300' Enduro; Lake Moolvalya, Parker, AZ.

(a) *Location.* The limits of the proposed safety zone are as follows: The Headgate Dam at 34°11.20 N, 114°13.74 W following the river northeast to 34°10.10 N, 114°16.61 W.

(b) *Enforcement Period.* This section will be enforced from 6 a.m. to 6 p.m. on October 24, 2008 through October 26, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 22, 2008.

C.V. Strangfeld,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. E8–13146 Filed 6–10–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 156 and 165

[EPA–HQ–OPP–2005–0327; FRL–8358–1]

RIN A2070–AJ37

Pesticide Management and Disposal; Standards for Pesticide Containers and Containment: Proposed Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the container and containment regulations to provide a 1–year extension of the labeling compliance date from August 17, 2009 to August 17, 2010; to change the phrase ''sold or distributed'' to ''released for shipment'' as associated with all of the compliance dates; to provide for exceptions to the language requirements for some specific nonrefillable packages; to allow for waivers of certain label requirements for other refillable and nonrefillable containers on a case-by-case basis; and to correct typographical and other minor errors. In addition, the Agency is proposing to amend the definitions in 40 CFR part 152 to establish a definition of ''released for shipment.'' These changes are being proposed to address concerns raised by stakeholders and as a result of further Agency consideration.

DATES: Comments must be received on or before July 11, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005-0327, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005-0327. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Nancy Fitz, Field and External Affairs Division (FEAD) (7506P), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-7385; fax number: (703) 308-2962; e-mail address: *fitz.nancy@epa.gov*, or Kimberly Nesci, FEAD (7506P), OPP, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-308-8059; fax number: (703) 308-2962; e-mail address: *nesci.kimberly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide formulator, agrichemical dealer, an independent commercial applicator, or a custom blender. Potentially affected entities may include, but are not limited to:

- Pesticide formulators (NAICS code 32532), e.g., establishments that formulate and prepare insecticides, fungicides, herbicides or other pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments.
- Agrichemical dealers (NAICS code 44422), e.g., retail dealers that distribute or sell pesticides to agricultural users.
- Independent commercial applicators (NAICS code 115112), e.g., businesses that apply pesticides for compensation (by aerial and/or ground application) and that are not affiliated with agrichemical dealers.
- Custom blenders (NAICS code 44422), most custom blenders are also dealers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Units II.D., III., V.B., VI.C., VII.B., VIII.C., and IX.A. of the preamble to the final pesticide container and containment rule, 71 FR 47330 (August 16, 2006). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

On August 16, 2006, EPA promulgated a final rule titled ''Pesticide Management and Disposal; Standards for Pesticide Containers and Containment'' (71 FR 47330) (Container and Containment Rule; establishing 40 CFR part 165, and amending 40 CFR part 156). The Container and Containment Rule established regulations for the safe storage and disposal of pesticides, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), to reduce the likelihood of unreasonable adverse effects on human health and the environment. The container and containment regulations include requirements for pesticide container design; procedures, standards, and label language to facilitate removal of pesticides from containers prior to their being used, recycled, or discarded; and requirements for containment of stationary pesticide containers and procedures for container refilling operations. The rule required that all pesticide products distributed or sold by a registrant as of August 17, 2009, bear labels that comply with the rule's label language requirements (40 CFR 156.159).

EPA is proposing to amend the container and containment regulations to provide a 1–year extension of the labeling compliance date (from August 17, 2009 to August 17, 2010); to change the phrase ''sold or distributed'' to ''released for shipment'' as associated with all of the compliance dates; to provide for exceptions to the language requirements for some specific nonrefillable packages; to allow for waivers of certain label requirements for other refillable and nonrefillable containers on a case-by-case basis; and to correct typographical and other minor errors. In addition, the Agency is proposing to establish a definition of ''released for shipment.'' These changes are being proposed in response to subsequent requests from stakeholders and based on further Agency consideration.

B. Statutory Authority

These proposed regulations are issued pursuant to the authority given the Administrator of EPA in sections 2 through 34 of FIFRA, 7 U.S.C. 136—136y. Sections 19(e) and (f) of FIFRA, 7 U.S.C. 136a(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. FIFRA section 19(f) requires EPA to promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal.

FIFRA section 25(a), 7 U.S.C. 136w(a), authorizes EPA to issue regulations to carry out provisions of FIFRA.

III. Proposed Changes to 40 CFR Part 152—Pesticide Registration and Classification Procedures

The Agency is proposing to amend § 152.3 to add a new definition for ''released for shipment.'' As discussed in subsequent units of this proposed rule, the Agency is proposing to use this term in § 156.159, §165.20, §165.40, and § 165.60. The Agency considered putting definitions for this term in both parts 156 and 165, but notes that because the term has also been used in § 167.3 and in various guidance documents, a generally applicable definition may be appropriate. The Agency is asking for comments on both the proposed definition itself and on the placement of the definition in the regulations. The proposed definition is as follows:

> A product is released for shipment when the producer has packaged and labeled it in the manner in which it will be shipped, or has stored it in an area where finished products are ordinarily held for shipment. An individual product is only released for shipment once, except where subsequent events constitute production (e.g., relabeling, repackaging).

The proposed definition is consistent with EPA's previously published definitions of ''released for shipment''; the most recent of these appears in PR Notice 93-11, Supplement C (August 13, 1993), and in a 1984 proposed rule (49 FR 37916, September 26, 1984). The first sentence is essentially that of the 1984 proposed rule, which focuses on actions manifesting the producer's intent to introduce a product into commerce. The second sentence would make it clear that products already in the channels of trade are all ''released for shipment,'' and that relabeled or reworked products must be released a second time.

IV. Proposed Changes to 40 CFR Part 156—Labeling Requirements for Pesticides and Devices

The Container and Containment Rule added a new subpart H titled ''Container Labeling'' to 40 CFR part 156 that requires the following information or statements on certain pesticide product labels:

- A statement identifying the container as nonrefillable or refillable.
- On nonrefillable containers, statements providing basic instructions for managing the container and a batch code.
- Cleaning instructions for some nonrefillable containers.
- Cleaning instructions for refillable containers at the end of their useful lives.

In addition, the Container and Containment Rule modified several existing requirements in 40 CFR 156.10, including allowing for blank spaces on the labels of some refillable containers for the net contents and EPA establishment number and adding a reference to the container and containment regulations in subpart H and 40 CFR part 156.

In this proposed rule, the Agency is proposing to amend the labeling requirements in 40 CFR part 156 subpart H.

A. Background

After promulgation of the Container and Containment Rule, the Agency was contacted by stakeholders with concerns about the compliance date associated with the labeling requirements; the implications of the phrase ''sold or distributed'' for the handling of packaged pesticide products that may be returned unused to a registrant at the end of a use season; and the scope of pesticide products and containers for which some of the labeling statements are being required.

1. *Compliance date*. Some registrants have asserted that they do not have sufficient time to change all labels for final packaging of pesticide products in time to meet the August 17, 2009, compliance date. These time constraints are due to the following factors:

i. Almost all pesticide product registrations are involved. Generally, changes to product labels are done on a product by product basis or only for products containing one active ingredient. In the case of changes required by the pesticide container and containment regulations, essentially all product registrations are involved (approaching 17,000 individual products).

ii. Often registrants sell multiple individual package sizes (often referred to as ''SKUs'') under one product registration number. As a result of multiple SKUs being associated with individual registrations, the changes will affect many more final printed packages than individual registrations.

iii. The labels for certain types of seasonal products and consumer specialty products are unique and expensive to print. For example, for some pool chemicals, labeling is printed directly on buckets that will contain the pesticide product. Each label plate needed to print the buckets is expensive to produce, as is each individual printed bucket.

iv. The production of many consumer specialty products (pool chemicals, lawn chemicals) is on an annual and seasonal basis; therefore, for some products, there is only one opportunity each year to print new product labels.

v. Many registrants had delayed submitting revised product labels that include the new requirements until the Agency provided further guidance to explain the conditions under which registrants might submit revised labels under an expedited review process (that is, a notification process). Although this guidance has since published (Pesticide Registration (PR) Notice 2007-4, published on November 7, 2007); the 15 months that passed between the publication of the August 16, 2006, final rule and the publication of the PR Notice may have contributed to delays in amending labels.

2. *Labeling of returned products*. Registrants have also expressed concerns about how the new container and containment labeling requirements would apply to products that are returned to the manufacturer. The container and containment regulations provide that products distributed or sold by a registrant after August 17, 2009, must bear the new labeling statements. According to registrants, contracts with many consumer retail establishments require that seasonal consumer products remaining on the shelves at the end of the use season be returned to the manufacturer. As a result, any products bearing old labels and originally distributed in spring 2009 and that did not sell might be returned to registrants in the fall of 2009 after the August 17, 2009, compliance date. Subsequent sale or distribution of the returned products would not be in compliance with the container and containment regulations unless the products were relabeled. Registrants have indicated that relabeling of the returned products would be especially costly and difficult and that the products may require repackaging that could result in unintentional exposures to the pesticide; therefore, registrants would be more likely to dispose of returned product bearing old labeling rather than relabel or repackage the product. While the Agency believes that the label language required by the

container and containment regulations is important, the expected decrease in risk from improving handling practices for the relatively small number of returned containers is likely not significant enough to justify the cost of expensive relabeling, repackaging or disposal of product bearing old labels, and the potential exposure from repackaging or disposal of product. Accordingly, EPA proposes to change the phrase ''distributed or sold'' in § 156.159 to ''released for shipment.'' EPA considers a product released for shipment when the producer has packaged and labeled it in the manner in which it will be shipped, or has stored it in an area where finished products are ordinarily held for shipment. An individual product is only released for shipment once, except where subsequent events constitute production (e.g., relabeling, repackaging). Therefore, any products returned at the end of a use season could be re-distributed or sold and remain in compliance with the container and containment regulations.

3. *Scope of products and flexibility of requirements.* Some registrants are also concerned about the scope of products subject to the new container-type statements (see 40 CFR 156.140). The container and containment regulations require that either the statement ''refillable container'' or ''nonrefillable container'' be placed on the label or container of all pesticide products except plant-incorporated protectants. Registrants are requesting that the Agency exempt inherently or obviously nonrefillable packaging types from this requirement. These registrants believe that it is unduly burdensome and not appropriate to require the phrase ''Nonrefillable container. Do not reuse or refill'' on obviously nonrefillable packages. While the additional language will provide extra precautions for containers that physically could be reused or refilled, registrants maintain that these additional precautions are not necessary for containers that are inherently nonrefillable because existing labeling generally includes a phrase such as ''Do not reuse this container,'' and the container and containment regulations do not change this phrase. Examples of some types of containers that registrants consider obviously nonrefillable are aerosol spray cans, bait stations, and foil pouches for water soluble packets.

In addition, the Agency has recognized several additional types of registered pesticides for which it makes sense to reconsider the labeling statements described above. For example, some pesticides are not sold in containers, such as impregnated repellent clothing articles. In this case, the labeling consists of a clothing tag, and it would serve no purpose for the tag to include the phrase ''nonrefillable container.''

Finally, the Agency originally intended for the waiver/modification statement included in the residue removal section of the container and containment regulations (40 CFR 156.144(d)) to apply to all of the new label language requirements. However, as written, the regulations do not allow for waivers from the ''nonrefillable container'' or ''refillable container'' language.

EPA is proposing several amendments to the container and containment regulations to address these issues and to correct typographical and other errors, as follows:

- EPA proposes to change the compliance date associated with the container and containment labeling requirements to August 17, 2010.
- EPA proposes to change the phrase ''distributed or sold'' to ''released for shipment'' as associated with the labeling compliance date. In addition, EPA proposes to make a similar change to the language associated with the compliance date for the container and repackaging requirements as well.
- EPA proposes to exempt certain container types from the container type labeling statements required by the container and containment regulations (40 CFR 156.140) and to allow the Agency to approve modifications to that language on a case-by-case basis. The specific container types that EPA proposes to exempt are described in detail in Unit III.C. of this proposed rule.
- EPA proposes to correct typographical and other minor errors in the container and containment regulations as described in detail in Unit V of this proposed rule.

B. Addition of Definitions Section to Subpart A

In this proposed rule, the Agency is proposing to add a new definitions section (§ 156.3) to part 156 and to include an introductory paragraph in the definitions section noting that the terms used in part 156 have the same meaning as in the Act and 40 CFR part 152. This paragraph simply refers readers to the definitions in the Act and in part 152. In addition, the Agency is proposing to add to § 156.3 a definition for the term ''dilutable,'' since this term is used in part 156.

C. Changes to Subpart H—Container Labeling

1. *Identification of container types.* In this proposed rule, the Agency is proposing to exempt certain nonrefillable container types from the ''identification of container type'' requirements described in 40 CFR 156.140. The container types that EPA proposes to exempt are listed in proposed § 156.140(a)(5) and are as follows:

- Aerosol cans.
- Nonrefillable caulking tubes and other nonrefillable squeezable tube containers for paste, gel, or other similar formulas (e.g., crack and crevice application devices, unit dose application tubes).
- Foil packets for water soluble packaging, repellent wipes, and other single-use products.
- Tamper-resistant bait stations.
- Tamper-resistant cages for repellent or trapping strips.
- Packaging for pet collars.
- One-time use semiochemical dispersion devices.
- Any packaging that is destroyed by the use of the product contained therein.
- Any packaging that would be destroyed if reuse of the container were attempted (for example, bacteriostatic water filter cartridges, blister card packaging, etc.).

EPA proposes to exempt these container types from the requirement to include a statement identifying the container as a nonrefillable container in § 156.140(a)(1) and the requirement to include a reuse statement in § 156.140(a)(2). These sections of the rule require pesticide labels to include the phrase ''Nonrefillable container. Do not reuse or refill this container'' or one of the other statements about reuse in § 156.140(a)(2). Currently, many labels already include the statement ''Do not reuse this container.''

EPA considers the container types listed above to be inherently nonrefillable because, after use of the pesticide, they do not appear to offer any practical use as containers. For most containers, the container type and reuse statements provide additional precautions and useful information; however, these precautions and additional information are not necessary for containers that are either highly unlikely or physically impossible to be reused or refilled. In addition, the majority of pesticide labels already include a phrase such as ''Do not reuse this container'' to prohibit any attempted reuse.

Registrants also requested exemptions for bags (flexible packaging) and

syringes. EPA has not proposed an exemption for flexible packaging and syringes because the Agency believes it is likely that persons might consider these to be useful as containers or applicators for pesticides or other materials after initial use. The Agency believes that the potential for adverse effects resulting from refill and/or reuse of these containers is greater than the burdens associated with labeling these containers as nonrefillable containers and expressly prohibiting reuse or refill of the containers.

EPA requests comments on the proposed approach for exempting certain pesticide container types from the requirement to include a statement identifying the container as a nonrefillable container in § 156.140(a)(1) and the requirement to include a reuse statement in § 156.140(a)(2). In particular, EPA requests comments regarding criteria that could be used to determine whether particular containers should be exempt; the types of containers that are included in the exemption; and whether other containers should also be exempted. This may include any additional information on flexible packaging and syringes that might cause the Agency to reconsider those types of containers for exemption.

EPA is proposing to exempt these container designs only from the statement identifying the container as a nonrefillable container in § 156.140(a)(1) and the requirement to include a reuse statement in § 156.140(a)(2). These containers would still be required to bear a recycling/reconditioning statement per § 156.140(a)(3). EPA is not proposing to automatically exempt these container types from the requirement to have a statement about recycling/reconditioning because the Agency wants to facilitate recycling wherever it is feasible. In addition, EPA believes that most labels already comply with that requirement because they include a statement about recycling. EPA requests comments on this approach and specifically about whether container types that are exempt from § 156.140(a)(1) and § 156.140(a)(2) should also be exempt from § 156.140(a)(3).

The Agency is also proposing to amend § 156.140 to add a new paragraph (c) that would allow EPA to modify or waive the label statements required by § 156.140. The Agency originally intended for the waiver/modification statement included in the residue removal section (40 CFR 156.144(d)) to apply to all label language. However, as written, the regulations do not allow for exemptions from the ''nonrefillable container'' or ''refillable container'' language. The Agency is proposing to allow modifications or waivers of the required language so that the Agency can determine on a case-by-case basis whether the requirements for the nonrefillable container, reuse, recycling/reconditioning and refillable container label statements are appropriate.

There is a trade-off to exempting container types in the regulations and dealing with registrant-requested changes on a case-by-case basis through the waiver/modification process. Dealing with registrant waiver/modification changes on a case-by-case basis is flexible and can account for future container developments and non-traditional container types for which the required label statements may not be appropriate. However, the waiver/modification process is time- and labor-intensive for both the Agency and registrants. EPA requests comments on whether the proposed approach to specifically exempt certain container types and to allow waivers/modifications results in an appropriate balance.

The last substantive change that the Agency is proposing to make to § 156.140 is a change to add paragraph (d), which would exempt pesticide-impregnated objects that are registered as pesticides and not packaged in a container from all of the requirements in § 156.140. These include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles. It would not be appropriate to refer to the pesticide container on the labels for these types of products if no container exists. This is an unusual situation; however, the Agency has decided to propose to include this exemption as a general statement to eliminate the need for the individual submission and review of exemption requests for these types of products in the future.

In addition, EPA is proposing minor revisions to the introductory paragraphs in § 156.140(a) and § 156.140(b) to reference the exemptions in proposed § 156.140(a)(5) and § 156.140(d) and the proposed waiver/modification provision in § 156.140(c).

2. *Changes to residue removal instructions*. The Agency is proposing to add § 156.144(e) to exempt compressed gas cylinders from the requirement to provide residue removal instructions. The Agency is proposing this exemption because it may not be safe or appropriate for end users to attempt to clean compressed gas cylinders. Generally, gas cylinders bear label language specific to the use of a compressed cylinder (see PR Notice 84-5), and EPA had not intended the Container and Containment Rule to supersede any existing precautionary language for gas cylinders. In the 2006 final rule, EPA exempted containers that hold pesticides that are gaseous at atmospheric temperature and pressure from the refillable container and repackaging requirements in 40 CFR part 165. The proposed exemption in this proposed rule would make the label language requirements of § 156.144 consistent with 40 CFR part 165.

In addition, the Agency is proposing to add § 156.144(f) to exempt from the requirements of § 156.144 pesticide-impregnated objects that are registered as pesticides and not packaged in a container. These include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles, such as tents or mosquito netting. In the absence of a container, there is no need for residue removal instructions. The Agency proposes to include this exemption to eliminate the need for the individual submission and review of exemption requests for these products in the future.

In § 156.144(g), the Agency is proposing that pesticide product labels do not have to bear residue removal instructions applicable to transport vehicles. Transport vehicles such as rail cars and other cargo-carrying vehicles are classified as containers in the container and containment regulations, but are exempt from the refillable container and repackaging regulations in 40 CFR part 165. The Agency is proposing that pesticide product labels do not have to bear residue removal instructions applicable to transport vehicles because the residue removal label language in the container and containment regulations is not tailored to the unique nature of transport vehicle containers. This change will make the residue removal label language requirements consistent with the refillable container and repackaging requirements, with regard to transport vehicles.

Finally, EPA is proposing a minor revision to change § 156.144(a) to reference the proposed exemptions in § 156.144(e), (f), and (g).

3. *Changes to compliance date*. The Agency is proposing to extend the compliance date associated with the labeling requirements of part 156, subpart H, (§ 156.159) from August 17, 2009, to August 17, 2010. This change will allow additional time for registrants to change all labels for final packaging for all registered products and SKUs and

remain in compliance with the container and containment regulations. The Agency is maintaining August 17 as the compliance date for consistency with the other compliance dates in the container and containment regulations. EPA believes that maintaining August 16 or 17 of varying years as a compliance date for all the different requirements in the container and containment regulations will facilitate compliance by the regulated community. EPA requests comments on the proposed compliance date for the part 156, subpart H, label requirements and specifically whether there is any advantage to extending the date a few additional months based on the typical schedule and activities involved with the production, distribution and sale of pesticides.

In addition, the Agency is proposing to change the phrase ''distributed or sold'' to ''released for shipment,'' as associated with the compliance date. This change will allow pesticide products that were initially distributed or sold to retailers before the compliance date, but which may be returned unused to the producer at the end of a use season, to be distributed or sold the following season without relabeling. EPA believes the number of containers which would be affected by this change is relatively small, and as a result, EPA expects relabeling would involve both high per-unit costs and low benefits. This change is consistent with language used by the Agency for other situations where it seeks label changes. In addition, this change is consistent with the decision in the Container and Containment Rule to not finalize a 5–year channels of trade provision. The Agency decided not to include a 5–year channels of trade provision to minimize the disruption and burden of implementing this rule and because the Agency does not believe that current products and containers pose enough hazard to justify the costs of recalling them from retailers or distributors (71 FR 47356).

V. Proposed Changes to 40 CFR Part 165—Pesticide Management and Disposal

A. Changes to Definitions in Subpart A

The Agency is proposing some changes to the definitions in § 165.3. In particular, the Agency is proposing to include an introductory paragraph to state that the terms used in this part have the same meaning as the terms used in the Act and in 40 CFR part 152. In addition, the Agency is proposing to revise two definitions, add three new definitions, and delete three definitions.

The Agency is proposing to change the definition of ''agricultural pesticide'' to ''...any product labeled for use in or on a farm, forest, nursery, or greenhouse.'' This change is being proposed in order to be consistent with the definition of ''agricultural establishment'' in the Worker Protection Standard (WPS) at 40 CFR 170.3. EPA believes that using this definition will facilitate compliance with and understanding of the pesticide container and containment regulations because the definition of agricultural establishment in the WPS has a long history and is well-understood. Introducing a new definition of ''agricultural pesticide'' that does not conform exactly to the definition of ''agricultural establishment'' could cause unnecessary confusion. The Agency does not believe that changing the definition of ''agricultural pesticide'' substantially changes the scope of the pesticide container and containment regulations, but requests comment on the potential impacts of revising the definition of agricultural pesticide.

The Agency is proposing to delete the definition of ''flowable concentrate'' and to add a new definition for the term ''suspension concentrate,'' as follows: ''...a stable suspension of active ingredients in a liquid intended for dilution with water before use.'' EPA is making these changes based on input from the registrants that ''suspension concentrate'' is the term currently used in formulation chemistry to describe the pesticide formulations that EPA originally described with the term ''flowable concentrate.'' The Agency is also changing references to ''flowable concentrate'' to ''suspension concentrate'' in § 165.25(f)(2) and § 165.27(b)(5).

The Agency is proposing to revise the definition of ''pesticide compatible'' as applied to containment to delete ''secondary'' from the two references to ''secondary containment'' and to change the word ''materials'' to ''substances,'' as applied to the substances being contained. ''Secondary'' is misleading in this definition because the compatibility requirement applies to both secondary containment units and containment pads. The change from ''materials'' to ''substances'' is simply editorial since ''materials'' is also used in the phrase ''containment construction materials.''

The Agency is proposing to add a definition for the term ''capacity'' since this term is used in part 165 to make clear that the container capacities specified refer to the rated capacity of the container (also known as the nominal or design capacity). In order to allow space for thermal expansion, containers typically hold a volume somewhat greater than the rated capacity. The rated capacity of a container is generally readily apparent, and actual capacity generally is not. This makes rated capacity a more useful tool for distinguishing containers for purposes of the regulations. While EPA did specify rated capacity in § 165.65(d)(4) and § 165.70(e)(4), it did not do so consistently throughout part 165. The proposed revision would confirm that all references to container capacity mean rated capacity.

The Agency is proposing to add to § 165.3 a definition for the term ''dilutable'' since this term is used in part 165. This term is defined in § 165.25(f)(1), so the same definition should also appear in § 165.3.

The Agency is proposing to remove the definitions of ''pressure rinse'' and ''triple rinse'' because these terms are not used in part 165.

B. Changes to Subpart B—Nonrefillable Container Standards: Container Design And Residue Removal

1. *General provisions.* The Agency is proposing to change the compliance date language in § 165.20(c) to be consistent with the proposed compliance date language in revised § 156.159 by using the phrase ''released for shipment'' instead of ''distributed or sold.'' This change will allow product that was initially distributed or sold to retailers before the compliance date, but which may be returned unused to the producer at the end of a use season, to be sold or distributed the following season without changing the container. EPA believes the number of containers that would be affected by this change is relatively small and, as a result, EPA expects changing the container would involve both high per-unit costs and low benefits. This change is consistent with language used by the Agency for situations where it seeks label changes.

In addition, the Agency is proposing an editorial change to § 165.20(c) to change ''...that complies with these regulations'' to ''...that complies with the regulations of this subpart'' to be more precise.

2. *Changes to scope of pesticide products.* The Agency is proposing to make an editorial change to the heading in § 165.23(d) to remove quotes from the term antimicrobial.

3. *Changes to nonrefillable container standards.* The Agency is proposing to change § 165.25(a) and § 165.25(b) to clarify that the requirement to comply with the adopted Department of Transportation (DOT) standards referenced therein only applies to portable containers, which was the

Agency's intent in the August 16, 2006 rule.

The Agency is also proposing to clarify that the DOT regulations which are adopted in § 165.25 apply to the pesticide product as it is packaged for transportation in commerce. This change is being proposed to be consistent with the DOT regulations in terms of the form of the packaging that is subject to the adopted DOT regulations. The other nonrefillable container requirements in § 165.25, including the requirements for closures, dispensing capability and residue removal, apply to the container used to enclose a pesticide, i.e., the receptacle that comes into direct contact with the pesticide. However, the DOT hazardous materials regulations apply to a package as it is prepared for transportation in commerce. For example, 2.5-gallon jugs are often shipped for transportation in commerce as pairs of jugs in a cardboard box. When the jugs contain DOT hazardous materials, it is the boxed package that would have to comply with the DOT regulations. EPA proposes to amend § 165.25 to clarify that it is the product as packaged for transportation in commerce that must comply with those DOT regulations that are adopted in § 165.25 for pesticides that are not hazardous materials. On the other hand, the other § 165.25 requirements – for closures, dispensing capability and residue removal – would apply to the immediate pesticide container (e.g., the 2.5-gallon jug itself). EPA requests comments on whether the proposed change accomplishes the goal of clarifying that the adopted DOT requirements in § 165.25(a) are intended to apply to the container or packaging as it is transported in commerce. The Agency also requests suggestions for alternative revisions to § 165.25(a) that would provide that clarification.

In addition, the Agency is proposing to change §§ 165.25(a), (b)(1) and (b)(2) to add an additional citation to the list of DOT regulations with which non-refillable containers must comply. The Agency is proposing this change to include the requirements of 49 CFR part 107, subpart B that are applicable to special permits because this subpart regulates exemptions from DOT requirements. The original intent of § 165.25 was that a pesticide packaged in compliance with DOT's requirements would meet the requirements of § 165.25(a) and (b). This proposed change is consistent with the original intent and simply clarifies that if a pesticide is in compliance with DOT requirements via an exemption, it is also acceptable under the container and containment regulations.

The Agency is also proposing to add three additional citations to the list of DOT regulations in § 165.25(a) with which a nonrefillable container must comply. Specifically, EPA is proposing to add 49 CFR 173.4, 173.5, and 173.6 to incorporate several additional DOT exceptions so they would apply to pesticides that are not hazardous materials. These proposed exceptions are for small retailers, customers, research and sales personnel (49 CFR 173.6), small quantities (49 CFR 173.4), and transportation of agricultural products over local roads between fields of the same farm (49 CFR 173.5). The proposal to add these exceptions to the pesticide container regulations is intended to identify several situations where the DOT requirements adopted by § 165.25 would not apply. Similar to the adopted DOT provision in 49 CFR 173.155, which provides exceptions for Class 9 (miscellaneous hazardous materials) chemicals, adopting these provisions would clarify that certain containers and packages would not have to comply with all of the DOT hazardous materials requirements. Instead, the containers and packages would only have to comply with conditions specified in those regulatory exceptions.

The Agency is proposing these same changes to the corresponding DOT-related requirements for refillable containers in § 165.45.

Also in § 165.25, the Agency is proposing to change paragraph (f)(2) to substitute the term ''suspension concentrate'' for ''flowable concentrate.'' EPA is making this change based on input from the registrants that ''suspension concentrate'' is the term currently used in formulation chemistry to describe the pesticide formulations that EPA originally described with the term ''flowable concentrate.''

4. *Changes to reporting and recordkeeping*. The Agency is proposing an editorial change to the introductory paragraph in § 165.27(b) to properly cite § 165.25 – § 165.27.

The Agency is proposing to add new §§ 165.27(b)(4)(iii) and (b)(5)(iii) which would provide that evidence of an EPA-approved waiver request shall be sufficient to demonstrate compliance with the container dispensing capability and container residue removal standards.

Also in § 165.27, the Agency is proposing to change paragraph (b)(5) to substitute the term ''suspension concentrate'' for ''flowable concentrate.'' EPA is making this change based on input from the registrants that ''suspension concentrate'' is the term currently used in formulation chemistry to describe the pesticide formulations that EPA originally described with the term ''flowable concentrate.''

C. Changes to Subpart C—Refillable Container Standards: Container Design

1. *General provisions*. The Agency is proposing to add a new § 165.40(b)(3) to alert refillers to the existence of a refiller-specific exemption from some of the DOT-related requirements in § 165.45(a).

The Agency is proposing a change to the compliance date language in § 165.40(c) to be consistent with the proposed compliance date language in § 156.159 by using the phrase ''released for shipment'' instead of ''distributed or sold.'' See the discussion in Unit V.B.1. of this proposal for the rationale behind this change.

In addition, the Agency is proposing an editorial change to § 165.40(c) to change ''...that complies with these regulations'' to ''...that complies with the regulations of this subpart'' to be more precise.

2. *Changes to scope of pesticide products*. The Agency is proposing five editorial changes to § 165.43 to remove quotes from the term antimicrobial in the headings of paragraphs (c), (d), and (e), to remove an extraneous ''by'' in paragraph (f), and to add a space in paragraph (g).

3. *Changes to refillable container standards*. The Agency is proposing to change § 165.45 to clarify that DOT standards only apply to portable containers, to clarify that the DOT regulations which are adopted in § 165.45 apply to a pesticide product as it is packaged for transportation in commerce, to add a citation to 49 CFR part 107, subpart B for completeness and to add citations to the DOT exceptions in 49 CFR 173.4, 173.5, and 173.6. These proposed changes are discussed in more detail in Unit V.B.3. about the proposed revisions to the nonrefillable container requirements in § 165.25.

D. Changes to Subpart D—Standards For Repackaging Pesticide Products Into Refillable Containers

1. *General provisions*. The Agency is proposing a change to the compliance date language in § 165.60(c) to be consistent with the proposed compliance date language in § 156.159 by using the phrase ''released for shipment'' instead of ''distributed or sold.'' See the discussion in Unit V.B.1. of this proposal for the rationale behind this change.

In addition, the Agency is proposing an editorial change to § 165.60(c) to change ''...that complies with these

regulations'' to ''...that complies with the regulations of this subpart'' to be more precise.

2. *Scope of pesticide products included*. The Agency is proposing an editorial correction in § 165.63 to correctly cite the appropriate regulations in the table under paragraph (d)(1). The citations in the two rows about container inspection need to be corrected.

3. *Registrants who distribute or sell pesticide products in refillable containers*. The Agency is proposing to revise § 165.65(i)(2)(iii) to allow an identifying code other than a serial number as an acceptable mechanism to identify refillable containers in the registrant's records. This change is needed to be consistent with the requirement in § 165.45(d), which requires refillable containers to be marked with a serial number or other identifying code that will distinguish between the individual container and all other containers.

4. *Registrants who distribute or sell pesticide products to refillers for repackaging*. The Agency is proposing to revise § 165.67(b)(2)(ii) for clarity. This paragraph covers the situation where a pesticide product is repackaged by a refilling establishment at an end user's site.

The Agency is proposing to change § 165.60(d) to clarify that the written contract that registrants must provide to refillers is the contract referenced in § 165.67(b)(3).

5. *Refillers who are not registrants*. The Agency is proposing to revise § 165.70(b)(2)(ii) for clarity, similar to the corresponding provision in § 165.67 for registrants.

The Agency is proposing to change § 165.70(e)(5)(i) to clarify that the written contract that refillers must obtain is the contract referenced in § 165.70(b)(3). EPA is also proposing to revise § 165.70(j)(2)(iii) to allow another identifying code other than a serial number as an acceptable mechanism to track refillable containers, similar to the corresponding requirement in § 165.65 for registrants that sell or distribute pesticides directly in refillable containers.

E. Change to Subpart E—Standards For Pesticide Containment Structures

1. *General provisions*. The Agency is proposing an editorial correction to § 165.80(b)(1) to change ''that'' to ''than.''

2. *Design and capacity requirements for new structures*. The Agency is proposing editorial changes to § 165.85(a)(3) to remove ''secondary'' in this paragraph because the Agency did not intend to limit the compatibility requirement to secondary containment structures and to change the word ''materials'' to ''substances'' where it refers to substances being contained.

The Agency is proposing an editorial change to § 165.85(d) to clarify that the word ''new'' in this paragraph applies to a new secondary containment unit and not the pesticide containers themselves.

The Agency is proposing two changes to state that dry pesticide container storage areas must have a floor, consistent with the original intentions. EPA is proposing to move the existing requirement that stationary dry pesticide container storage areas have curbs from § 165.85(f)(3) to § 165.85(f)(4) and to insert a new paragraph (f)(3) that would require such areas to have floors as well. The requirement that these areas have floors is implied in the container and containment regulations because it does not make sense to have a curb made out of concrete, steel, or other rigid material without also having a floor. The proposed change would make this requirement explicit. In addition, the Agency is proposing editorial changes to rephrase the new § 165.85(f)(4) for clarity.

3. *Design and capacity requirements for existing structures*. The Agency is proposing editorial changes to § 165.87(a)(3) to remove ''secondary'' in this paragraph and to change ''materials'' to ''substances,'' similar to the proposed change in the corresponding regulations for new containment structures in § 165.85.

The Agency is proposing an editorial change to § 165.87(d) to clarify that the word ''existing'' in paragraph (d) applies to an existing secondary containment unit and not the pesticide containers themselves.

The Agency is proposing to change § 165.87 to state that dry pesticide container storage areas must have a floor, and to make editorial changes for clarity, similar to the corresponding changes to § 165.85(f) for new structures.

4. *Operational, inspection and maintenance requirements for all new and existing containment structures*. The Agency is proposing changes to the timing requirements for cleanup of spills in § 165.90(a)(2) and for repair of containment structures in § 165.90(b)(2). The Agency is proposing to change language that currently requires cleanup or repair by the end of the day to allow additional time to complete cleanup or repair in a situation in which attempting cleanup or repair may result in hazards that may be avoided if cleanup or repair were reasonably delayed. In most cases, and for routine spills and leaks, the requirement for cleanup by the end of the day would still apply. The Agency is requesting comment on this approach and the proposed language.

The Agency is proposing to change § 165.90(b)(3), which prohibits facilities from storing pesticide on a structure that needs to be repaired. EPA proposes to revise this paragraph to not allow any additional pesticide to be stored on a containment structure in need of repair. This change was made for practical reasons, i.e., to allow product already stored on that containment structure to remain so as not to require movement of pesticide containers. There is potentially greater risk from transferring pesticide products outside of a containment structure (and then back after repairs have been made) than to repair a structure while pesticide products remain on the containment structure. Also, the Agency is proposing to delete the second sentence from § 165.90(b)(3) because it would not be necessary after making this change.

The Agency is also proposing to revise § 165.90(b)(1) to clarify that the containment structures themselves must be inspected monthly, in addition to the containers and appurtenances. This is implied in the existing recordkeeping requirements (see § 165.95(a)), but EPA is proposing to modify this paragraph to make the requirement explicit.

5. *States with existing containment programs*. The Agency is proposing an editorial change to § 165.97(b)(1) to correct the term ''States'' to read ''State's.''

VI. Economic Impacts

EPA prepared two Economic Analyses (EAs) of the potential costs and benefits associated with the August 16, 2006, Container and Containment Rule, one for the container requirements and another for the containment requirements. The EAs, entitled ''Economic Analysis of the Pesticide Container Design and Residue Removal Standards'' and ''Economic Analysis of the Bulk Pesticide Containment Structure Regulations,'' are available in the docket for the pesticide Container and Containment Rule under docket identification number EPA–HQ–OPP–2005–0327. The Agency has prepared an addendum to these EAs to address the potential changes in the estimated impacts resulting from this proposed rule. The addendum to the EA, entitled ''Addendum to the June 1, 2006, Economic Analysis of the Bulk Pesticide Container Design and Residue Removal Standards'' is briefly summarized here, and is available in the docket for this rulemaking.

EPA estimated the total annual cost of the August 16, 2006, Container and Containment Rule to be $11.3 million ($8.37 million for containers plus $2.93 million for containment) and the total annual benefits from the final rule to be $17 to $23.4 million. When the estimated cost of the August 16, 2006, rule is adjusted to consider the amendments being proposed, there is an annual cost reduction of approximately $0.23 to $0.32 million due to a reduction in the number of labels that would need to be revised. There is no difference in the total annual benefits from the August 16, 2006, rule.

VII. FIFRA Mandated Reviews

In accordance with FIFRA sec. 25(a), the Agency submitted a draft of this proposed rule to the Committee on Agriculture in the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry in the United States Senate, and the FIFRA Scientific Advisory Panel (SAP). The Secretary of Agriculture waived review of this proposed rule.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant regulatory action'' because these requirements will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this proposed rule is not subject to review under Executive Order 12866.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden or activities requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection activities contained in the existing regulations are already approved under OMB control number 2070–0133, and are also identified under EPA ICR No. 1632. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. This proposed rule is expected to result in a slight 2% to 3% decrease in the estimated total costs of the Container and Containment Rule. As such, there are not expected to be any adverse economic impacts of affected entities, regardless of their size. The factual basis for the Agency's determination is presented in the addendum to the EA, entitled ''Addendum to the June 1, 2006, Economic Analysis of the Bulk Pesticide Container Design and Residue Removal Standards,'' prepared for this proposed rule, which is summarized in Unit VI., and a copy of which is available in the docket for this rulemaking. The following is a brief summary of the factual basis for this certification.

Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with the RFA as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the industry profiles that EPA prepared as part of the EAs for the 2006 rulemaking, EPA determined that the 2006 rulemaking was not expected to impact any small not-for-profit organizations or small governmental jurisdictions. Since this is a proposed amendment to that rulemaking, EPA has determined that this determination also applies to this proposed rule. As such, ''small entity''for purposes of the addendum EA prepared for this proposed rule, is synonymous with ''small business.'' Using the size standards established by the Small Business Administration, ''small businesses'' potentially impacted by this proposed rule are expected to include the same types of businesses described in the EAs prepared for the 2006 rulemaking. As indicated in those EAs, the small business size standard varies based on the primary NAICS code associated with the business. Specifically, the small businesses size standards varies from 100 or fewer workers (e.g., NAICS 422910, Farm Suppliers Wholesalers) to 1,000 or fewer workers (e.g., NAICS 325188, Inorganic Chemical Manufacturing), with the majority of small businesses having 500 or fewer workers (e.g., 325320, Pesticide/Agricultural Chemical Manufacturing).

In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency. EPA solicits comments specifically about potential small business impacts.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. Since State, local, and tribal governments are rarely pesticide applicants or registrants, this rule is not expected to affect small governments and contains no regulatory requirements that might significantly or uniquely affect small governments. Accordingly, this action is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications,'' because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 6, 2000), EPA has determined that this action does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. EPA is not aware of any tribal governments which are pesticide registrants, refillers or dealers storing large quantities of pesticides.

Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this action because it is not designated as an ''economically significant'' regulatory action as defined by Executive Order 12866 (see Unit VIII.A.), nor does it establish an environmental standard that is intended to have a negative or disproportionate effect on children. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action does not establish an environmentalstandard intended to mitigate health or safety risks.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not designated as an ''economically significant'' regulatory action as defined by Executive Order 12866 (see Unit VII.A.), nor is it likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not impose any technical standards that would require Agency consideration of voluntary consensus standards.

J. Executive Order 12898

This action does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency does not need to consider environmental justice-related issues.

List of Subjects in 40 CFR Part 152

Environmental protection, Labeling, Pesticides and pests.

List of Subjects in 40 CFR Part 156

Environmental protection, Labeling, Pesticides and pests.

List of Subjects in 40 CFR Part 165

Environmental protection, Packaging and containers, Containment structures, Pesticides and pests.

Dated: May 30, 2008.

Stephen L. Johnson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 152–[AMENDED]

1. The authority citation for part 152 would continue to read as follows:

Authority: 7 U.S.C. 136-136y; Subpart U is also issued under 31 U.S.C. 9701.

2. Amend § 152.3 to add alphabetically a definition for ''Released for Shipment'' to read as follows:

§ 152.3 Definitions.

* * * * *

Released for shipment. A product is released for shipment when the producer has packaged and labeled it in the manner in which it will be shipped, or has stored it in an area where finished products are ordinarily held for shipment. An individual product is only released for shipment once, except where subsequent events constitute production (e.g., relabeling, repackaging).

* * * * *

PART 156–[AMENDED]

3. The authority citation for part 156 would continue to read as follows:

Authority: 7 U.S.C. 136 through 136y.

4. Add a new § 156.3 to read as follows:

§ 156.3 Definitions.

Terms used in this part have the same meaning as in the Act and part 152 of this chapter. In addition, as used in this part, the following terms shall apply.

Dilutable means that the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application or use.

5. Amend § 156.140 by revising the introductory text of paragraph (a), by revising the introductory text of paragraph (b), and by adding paragraphs (a)(5), (c) and (d) to read as follows:

§ 156.140 Identification of container types.

* * * * *

(a) *Nonrefillable container.* For nonrefillable containers, the statements in paragraphs (a)(1) through (a)(4) of this section are required except as provided in paragraphs (a)(5), (c), and (d) of this section. If placed on the label, the statements in paragraphs (a)(1) through (a)(3) of this section must be under an appropriate heading under the heading ''Storage and Disposal.'' If any of the statements in paragraphs (a)(1) through (a)(3) of this section are placed on the container, an appropriate referral statement such as ''See container for recycling [or other descriptive word] information.'' must be placed on the label under the heading ''Storage and Disposal.''

* * * * *

(5) *Exemptions.* Pesticide products packaged in the following nonrefillable containers are exempt from the requirements in paragraphs (a)(1) and (a)(2) in this section:

(i) Aerosol cans.

(ii) Nonrefillable caulking tubes and other nonrefillable squeezable tube containers for paste, gel, or other similar formulas.

(iii) Foil packets for water soluble packaging, repellent wipes, and other single use products.

(iv) Tamper-resistant bait stations.

(v) Tamper-resistant cages for repellent or trapping strips.

(vi) Packaging for pet collars.

(vii) One-time use semiochemical dispersion devices.

(viii) Any packaging that is destroyed by the use of the product contained.

(ix) Any packaging that would be destroyed if reuse of the container were attempted.

(b) *Refillable container.* For refillable containers, one of the following statements is required except as provided in paragraphs (c) and (d) of this section. If placed on the label, it must be under the heading ''Storage and Disposal.'' If the statement is placed on the container, an appropriate referral statement, such as ''Refilling limitations are on the container.'' must be placed under the heading ''Storage and Disposal.''

* * * * *

(c) *Modification.* EPA may, on its own initiative or based on data or

information submitted by any person, modify or waive the requirements of this section or permit or require alternative labeling statements.

(d) *Exemption for pesticide-impregnated objects that are registered as pesticides.* Pesticide-impregnated objects that are registered as pesticides and not packaged in a container are exempt from the identification of container type requirements in this section. These could include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles, such as tents or mosquito netting, that are not sold in containers.

6. Amend § 156.144 by revising paragraph (a), and by adding paragraphs (e), (f), and (g) to read as follows:

§ 156.144 Residue removal instructions – general.

(a) *General.* Except as provided by paragraphs (c) through (g) of this section, the label of each pesticide product must include the applicable instructions for removing pesticide residues from the container prior to container disposal that are specified in § 156.146 and § 156.156. The residue removal instructions are required for both nonrefillable and refillable containers.

* * * * *

(e) *Exemption for compressed gas cylinders.* Pesticide products that are packaged in compressed gas cylinders or containers that hold pesticides that are gaseous at atmospheric temperature and pressure are exempt from the residue removal instruction requirements in this section through § 156.156.

(f) *Exemption for pesticide-impregnated objects that are registered as pesticides.* Pesticide-impregnated objects that are registered as pesticides and not packaged in a container are exempt from the residue removal instruction requirements in this section through § 156.156. These could include such products as repellent-impregnated articles of clothing and other repellent-impregnated fabric articles, such as tents or mosquito netting, that are not sold in containers.

(g) *Exemption for transport vehicles.* Pesticide product labels do not have to bear residue removal instructions applicable to transport vehicles (e.g., tank cars).

7. Revise § 156.159 to read as follows:

§ 156.159 Compliance date.

As of August 17, 2010, all pesticide products released for shipment by a registrant must have labels that comply with §§ 156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146, and 156.156.

PART 165–[AMENDED]

8. The authority citation for part 165 would continue to read as follows:

Authority: 7 U.S.C. 136 through 136y.

9. Amend § 165.3 as follows:

a. By adding an introductory paragraph.

b. By revising the definitions for ''Agricultural pesticide'' and ''Pesticide compatible'' as applied to containment.

c. By adding alphabetically new definitions for ''Capacity,'' ''Dilutable,'' and ''Suspension concentrate,''.

d. By removing the definitions for ''Flowable concentrate,'' ''Pressure rinse'', and ''Triple rinse.''

§ 165.3 Definitions.

Terms used in this part have the same meaning as in the Act and part 152 of this chapter. In addition, as used in this part, the following terms shall apply.

* * * * *

Agricultural pesticide means any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

* * * * *

Capacity means, as applied to containers, the rated capacity of the container.

* * * * *

Dilutable means that the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application or use.

* * * * *

Pesticide compatible means, as applied to containment, that the containment construction materials are able to withstand anticipated exposure to stored or transferred substances without losing the capacity to provide the required containment of the same or other substances within the containment area.

* * * * *

Suspension concentrate means a stable suspension of active ingredients in a liquid intended for dilution with water before use.

* * * * *

10. Amend § 165.20 by revising paragraph (c) to read as follows:

§ 165.20 General provisions.

* * * * *

(c) *When do I have to comply?* As of August 17, 2009, any pesticide product packaged in a nonrefillable container and released for shipment by you must be packaged in a nonrefillable container that complies with the regulations of this subpart.

11. Amend § 165.23 by revising the heading of paragraph (d) as follows:

§ 165.23 Scope of pesticide products included.

* * * * *

(d) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?* * * *

* * * * *

12. Amend § 165.25 by revising paragraph (a), (b), and (f)(2) to read as follows:

§ 165.25 Nonrefillable Container Standards.

(a) *What Department of Transportation (DOT) standards do my nonrefillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?* A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(b) *What DOT standards do my nonrefillable containers have to meet under this part if my pesticide product is a DOT hazardous material?* (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

* * * * *

(f) * * *

(2) The test must be conducted only if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case by case basis.

* * * * *

13. Amend § 165.27 by revising the introductory text of paragraph (b), and the introductory text of paragraph (b)(5), and by adding paragraphs (b)(4)(iii), and (b)(5)(iii) to read as follows:

§ 165.27 Reporting and recordkeeping.

* * * * *

(b) *What recordkeeping do I have to do for my nonrefillable containers?* For each pesticide product that is subject to §§ 165.25 - 165.27 and is distributed or sold in nonrefillable containers, you must maintain the records listed in this section for as long as a nonrefillable container is used to distribute or sell the pesticide product and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe. You must keep the following records:

* * * * *

(4) * * *

(iii) A copy of EPA's approval of a request for a waiver from the container dispensing requirement.

(5) At least one of the following records pertaining to the nonrefillable container residue removal requirement in § 165.25(f) if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case by case basis:

* * * * *

(iii) A copy of EPA's approval of a request for a waiver from the residue removal standard requirement.

14. Amend § 165.40 by adding paragraph (b)(3), and by revising paragraph (c) to read as follows:

§ 165.40 General provisions.

* * * * *

(b) * * *

(3) If you are a refiller of a pesticide product and you are not a registrant of the pesticide product, § 165.45(a)(2) provides an exemption from some of the requirements in § 165.45(a)(1).

(c) *When do I have to comply?* As of August 16, 2011, any pesticide product packaged in a refillable container and released for shipment by you must be packaged in a refillable container that complies with the regulations of this subpart.

15. Amend § 165.43 by revising the introductory text of paragraphs (c) and (d), the heading of paragrph (e), the introductory text of pararaph (e)(1), and by revising paragraphs (f) and (g) to read as follows:

§ 165.43 Scope of pesticide products included.

* * * * *

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart?* The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

* * * * *

(d) *Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations?* An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except § 165.45(d) regarding marking and § 165.45(e) regarding openings. For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

* * * * *

(e) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?* (1) EPA may determine that an antimicrobial pesticide product otherwise exempt by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment is all of the following conditions exist:

* * * * *

(f) *What other pesticide products are subject to the regulations in this subpart?* The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt by paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in that section.

(g) *What does ''pesticide product'' or ''pesticide'' mean in the rest of this subpart?* In § 165.43(h) through § 165.47, the term ''pesticide product'' or ''pesticide'' refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (f) of this section.

* * * * *

16. Amend § 165.45 by revising paragraphs (a)(1) and (b), to read as follows:

§ 165.45 Refillable container standards.

(a) * * *

(1) A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), Part 178, and Part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

* * * * *

(b) *What DOT standards do my refillable containers have to meet under this part if my pesticide product is a DOT hazardous material?* (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

* * * * *

17. Amend § 165.60 by revising paragraph (c) to read as follows:

§ 165.60 General provisions.

* * * * *

(c) *When do I have to comply?* As of August 16, 2011, any pesticide product repackaged into a refillable container and released for shipment by you must have been repackaged in compliance with the regulations of this subpart.

18. Amend § 165.63 by revising paragraph (d)(1) to read as follows:

§ 165.63 Scope of pesticide products included.

* * * * *

(d) * * * (1) An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the

regulations in this subpart except for the following requirements:

Requirement	Requirement for registrants who distribute or sell directly in refillable containers	Requirement for refillers who are not registrants
Recordkeeping specific to each instance of repackaging	§ 165.65(i)(2)	§ 165.70(j)(2)
Container inspection: criteria regarding a serial number or other identifying code	§ 165.65(e)(2)	§ 165.70(f)(2)
Container inspection: criteria regarding one-way valve or tamper-evident device	§ 165.65(e)(3)	§ 165.70(f)(3)
Cleaning requirement: criteria regarding one-way valve or tamper-evident device	§ 165.65(f)(1)	§ 165.70(g)(1)
Cleaning if the one-way valve or tamper-evident device is not intact	§ 165.65(g)	§ 165.70(h)

* * * * *

19. Amend § 165.65 by revising paragraph (i)(2)(iii) to read as follows:

§ 165.65 Registrants who distribute or sell pesticide products in refillable containers.

* * * * *

(i) * * *

(2) * * *

(iii) The serial number or other identifying code of the refillable container.

20. Amend § 165.67 by revising paragraphs (b)(2)(ii) and (d) to read as follows:

§ 165.67 Registrants who distribute or sell pesticide products to refillers for repackaging.

* * * * *

(b) * * *

(2) * * *

(ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.

* * * * *

(d) *When must I provide the written contract to the refiller?* If you allow a refiller to repackage your product as specified in paragraph (b) of this section you must provide the written contract referenced in paragraph (b)(3) of this section to the refiller before you distribute or sell the pesticide product to the refiller.

* * * * *

21. Amend § 165.70 by revising paragraphs (b)(2)(ii), (e)(5)(i), and (j)(2)(iii) to read as follows:

§ 165.70 Refillers who are not registrants.

* * * * *

(b) * * *

(2) * * *

(ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.

* * * * *

(e) * * *

(5) * * *

(i) The written contract referenced in paragraph (b)(3) of this section from the pesticide product's registrant.

* * * * *

(j) * * *

(2) * * *

(iii) The serial number or other identifying code of the refillable container.

22. Amend § 165.80 by revising paragraph (b)(1) to read as follows:

§ 165.80 General provisions.

* * * * *

(b)* * *

(1) Refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (i.e., more than 50% of total annual revenue comes from retail operations).

* * * * *

23. Amend § 165.85 by revising paragraphs (a)(3), (d) and (f)(3); and by adding paragraph (f)(4) to read as follows:

§ 165.85 Design and capacity requirements for new structures.

(a) * * *

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

* * * * *

(d) *For new stationary liquid pesticide containment, what are the specific design requirements?* You must either anchor or elevate each stationary liquid pesticide container protected by a new secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

* * * * *

(f) * * *

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary dry pesticide containers must be stored.

(4) The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

24. Amend § 165.87 by revising paragraphs (a)(3), (d) and (f)(3); and by adding paragraph (f)(4) to read as follows:

§ 165.87 Design and capacity requirements for existing structures.

(a) * * *

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

* * * * *

(d) *For existing stationary liquid pesticide containment, what are the specific design requirements?* You must either anchor or elevate each stationary liquid pesticide container protected by an existing secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

* * * * *

(f) * * *

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary dry pesticide containers must be stored.

(4) The storage area for stationary containers of dry pesticides must be

enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

25. Amend § 165.90 by revising paragraphs (a)(2), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.

(a) * * *

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of the day on which pesticides have been spilled or leaked except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment.

* * * * *

(b) * * *

(1) Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your inspection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed no later than the end of the day on which damage is noticed and complete repairs within a time frame that is reasonable, taking into account the availability of cleanup materials, trained staff, and equipment.

(3) Not store any additional pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made.

26. Amend § 165.97 by revising paragraph (b)(1) to read as follows:

§ 165.97 States with existing containment programs.

* * * * *

(b) * * *

(1) The State must submit a letter and any supporting documentation to EPA. Supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to or more protective than that expected to be provided by the Federal regulations in this subpart.

* * * * *

[FR Doc. E8–12843 Filed 6–10–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 309 and 310

RIN 0970–AC32

Computerized Tribal IV–D Systems and Office Automation

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: This proposed rule would enable Tribes and Tribal organizations currently operating a comprehensive Tribal Child Support Enforcement program under Title IV–D of the Social Security Act (the Act) to apply for and receive direct Federal funding for the costs of automated data processing. This proposed rule addresses the Secretary's commitment to provide instructions and guidance to Tribes and Tribal organizations on requirements for applying for, and upon approval, securing Federal Financial Participation (FFP) in the costs of installing, operating, maintaining, and enhancing automated data processing systems.

DATES: Consideration will be given to written comments received by August 11, 2008.

ADDRESSES: Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director, Division of Policy, Mail Stop: OCSE/DP.

A copy of this regulation may be downloaded from *http://www.regulations.gov.* You may also transmit written comments electronically via the Internet. To transmit comments electronically access *https://www.regulations.acf.hhs.gov* and follow the instructions provided. You may also submit comments by telefaxing to (202) 260–5980. This is not a toll-free number.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Essey Workie, OCSE Division of Policy, (202) 401–9386. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This notice of proposed rulemaking is published under the authority granted to the Secretary (the Secretary) of the Department of Health and Human Services (the Department) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the Title IV-D program.

This proposed rule also is published in accordance with section 455(f) of the Act. Section 455(f) of the Act requires the Secretary to issue regulations governing grants to Tribes and Tribal organizations operating child support enforcement programs.

Background

Prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; Pub. L. 104–193), Title IV–D of the Act placed authority to administer the delivery of IV–D services solely with States. PRWORA authorized the Secretary to provide direct funding to Tribes and Tribal organizations to operate child support enforcement programs under Title IV–D and to promulgate implementing regulations.

On August 21, 2000 the Tribal Child Support Enforcement Program notice of proposed rulemaking (NPRM) was published in the **Federal Register** (65 FR 50800). In 1998, the Federal Office of Child Support Enforcement (the Office) conducted a series of six Nation-to-Nation consultations with Indian Tribes, Tribal organizations and other interested parties with the goal of obtaining Tribal input prior to publishing the NPRM. The consultations were designed to solicit Tribal input prior to drafting the Federal regulations. The government-to-government consultations were very useful in identifying key issues and evaluating policy options. The issues raised most frequently included Tribal sovereignty, jurisdiction, full faith and credit, access to automated Federal locate and enforcement processes and