• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 29, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 16, 2008.

Walter W. Kovalick, Jr,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(183) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(183) On January 24, 2008, the Illinois Environmental Protection Agency submitted a revision to its state implementation plan for the packaging production facility of CP–D Acquisition Company, LLC. The revision changes the source name from Cromwell-Phoenix, Incorporated, to CP–D Acquisition Company, LLC.

(i) Incorporation by reference.

(A) November 20, 2003, Supplemental Opinion and Order of the Illinois Pollution Control Board, AS 03–05, effective November 20, 2003.

[FR Doc. E8–25657 Filed 10–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 156 and 165

[EPA–HQ–OPP–2005–0327; FRL–8387–2]

RIN A2070–AJ37

Pesticide Management and Disposal; Standards for Pesticide Containers and Containment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this final rule, EPA is amending the pesticide container and containment regulations, which provide for the safe storage and disposal of pesticides as a means of protecting human health and the environment pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This final rule extends the labeling compliance date from August 17, 2009 to August 17, 2010; changes the phrase ''sold or distributed'' to ''released for shipment'' as associated with all of the compliance dates; provides certain exceptions to label language requirements; allows for waivers of certain label requirements; and makes various minor editorial changes. In addition, the Agency is amending 40 CFR part 152 by establishing a definition for ''released for shipment.''

DATES: This final rule is effective December 29, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0327. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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 Docket Facility is open 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: Jeanne Kasai, Field and External Affairs

Division (FEAD) (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-3240; fax number: (703) 308-2962; e-mail address: *kasai.jeanne@epa.gov*, or Nancy Fitz, FEAD (7506P), 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.*

SUPPLEMENTARY INFORMATION:

I. 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), e.g., establishments that provide the service of mixing pesticides to a customer's specification (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**.

II. Background

A. What Action is the Agency Taking?

On June 11, 2008, EPA published the ''Pesticide Management and Disposal; Standards for Pesticide Containers and Containment: Proposed Amendments.'' (73 FR 33035). In that proposal, EPA proposed a number of revisions to the existing container and containment regulations, which had been finalized in August 2006 (71 FR 47330). 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; requirements for containment of pesticides in stationary containers; and procedures for container refilling operations.

The public comment period for the NPRM closed on July 11, 2008. EPA received nine comments from trade associations and a consultant. All comments were generally in favor of the changes, with several suggestions for additional revisions to the container and containment regulations.

With this final rule, EPA is amending the container and containment regulations by extending the labeling compliance date from August 17, 2009 to August 17, 2010; changing the phrase ''sold or distributed'' to ''released for shipment'' as associated with all of the compliance dates; providing certain exceptions to label language requirements; allowing for waivers of certain label requirements; and making various minor editorial changes. In addition, the Agency is amending 40 CFR part 152 by establishing a definition for ''released for shipment.''

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

These final 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. Amendments to 40 CFR Part 152—Pesticide Registration and Classification Procedures

The Agency is amending § 152.3 by adding a new definition for ''released for shipment'' and is amending § 156.159, § 165.20, § 165.40, and § 165.60 to rely on this term. The proposed definition was 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).

Eight commenters expressed support for adding a definition of ''released for shipment.'' Several commenters suggested changes to the definition for clarification. In particular, commenters said that it was confusing whether a product had to satisfy either one of the two conditions (''1. Packaged and labeled'' or ''2. Stored in an area held for shipment'') or both conditions to be considered ''released for shipment.'' Another commenter indicated that the definition could be interpreted to mean that a product could be released for shipment a second time. One commenter suggested adding language to the definition so that the producer would have to identify whether a product was not yet released for shipment.

The Agency's intent was that either one of the conditions in the first sentence of the definition would have to be satisfied in order to be ''released for shipment.'' A product that is ''packaged and labeled in a manner in which it will be distributed or sold'' is reasonably considered to be ''released for shipment.'' Likewise, a product stored in an area where finished products are ordinarily held for shipment is also reasonably considered to be ''released for shipment.'' EPA is keeping the definition as ''packaged and labeled in a manner in which it will be distributed or sold, or stored in an area where finished products are ordinarily held for shipment'' so that inspectors can take product samples, for enforcement purposes, under either condition. For example, if the definition required both conditions for a product to be considered ''released for shipment,'' inspectors might not be authorized to collect samples from a loading dock or in transit, as they would not necessarily be ''stored in an area where products are ordinarily held for shipment.'' Conversely, inspectors might not be able to collect samples of mislabeled products even if they were stored in an

area where products were ordinarily held for shipment if, upon recognizing the error, a registrant announced that they were not ''packaged and labeled in the manner in which it will be distributed or sold.'' Therefore, the Agency is not changing ''or'' to ''and'' in the first sentence of the definition as suggested by commenters because EPA is maintaining its longstanding policy that either condition qualifies as released for shipment.

In the final rule, EPA changed the first condition from ''packaged and labeled in the manner in which it will be shipped'' to ''packaged and labeled in the manner in which it will be distributed or sold'' to make it clear that inspectors may collect samples of products in their final retail packaging, rather than limiting them to collecting products in shipping boxes, shrink-wrapped pallet loads, etc.

However, EPA is modifying the proposed definition as suggested by one commenter to allow that products not considered ready for shipment may be stored in an area where finished products are ordinarily held for shipment, provided that they are physically separated from products that are intended to be released for shipment and are marked as not yet released for shipment. The Agency is using the term ''marked'' instead of ''identified'' as suggested by the commenter to signify a tangible, physical indication apparent to workers and inspectors that the particular products are not released for shipment. A mere verbal instruction not to release certain products is not sufficient.

Also, EPA has revised the proposed definition to clarify that the term ''released for shipment'' refers to the earliest point in time that a product could be said to enter into commerce, and that the product remains in the condition of ''released for shipment'' through all subsequent distributions or sales, unless the pesticide product is consumed through the production of a new pesticide product. Thus, a product does not cease to be ''released for shipment'' as it moves through its distribution chain to the end user. In the context of FIFRA, an individual product is only ''released for shipment'' once, except where subsequent activities such as relabeling or repackaging, constitute production of a new pesticide product. To emphasize this point, EPA has replaced ''is released for shipment'' with ''becomes released for shipment'' in the final definition for ''released for shipment'' in § 152.3 which reads as follows:

A product becomes released for shipment when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment. Products stored in an area where finished products are ordinarily held for shipment, but which are not intended to be released for shipment must be physically separated and marked as not yet released for shipment. Once a product becomes released for shipment, the product remains in the condition of being released for shipment unless subsequent activities, such as relabeling or repackaging, constitute production.

One commenter suggested that a sentence be added to clarify that the term ''released for shipment'' is not intended to have the same meaning as ''distribute or sell.'' It is true that it is not the Agency's intention that the terms ''released for shipment'' and ''distribute or sell'' have the same meaning. This clarification is being provided here and may be included in guidance documents, but will not be added to the definition in the regulatory text.

The Agency also asked for comment on the placement of the definition in parts 156 and 165 of the regulations. Two commenters were in favor of placing the definition of ''released for shipment'' in parts 156 and 165 of the regulations citing the potential for confusion with the definition of ''distribute or sell'' in § 152.3. These commenters also requested that language be added to clarify that for the purposes of implementing the container labeling requirements, ''released for shipment'' is not intended to have the same meaning as ''distribute or sell.'' The Agency has decided that the above definition is appropriate in the context of the definition of ''distribute or sell'' in § 152.3, and for all purposes under FIFRA. Accordingly, EPA is adding the definition of ''released for shipment'' to the generally applicable definitions in § 152.3, rather than placing it in the definition sections specific to parts 156 and 165. This revision does not give the term ''released for shipment'' a meaning identical to ''distribute or sell''. ''Released for shipment'' has a more narrow definition, and is part, but not the whole, of the term ''distribute or sell.''

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

The Agency is amending 40 CFR part 156 by adding a new definitions section, § 156.3, consisting of introductory text, a new definition for ''dilutable'' and the existing definition from § 165.3 of ''transport vehicle''; in § 156.140(a) by changing the phrase ''in this section'' to read ''of this section.''; in§§ 156.140(a)(5), (d), and (e) by exempting certain container types from container type label statements; in § 156.140(c), by providing a mechanism whereby the Agency can approve modifications to the container type label language on a case-by-case basis; in §§ 156.144(e), (f) and (g) by exempting certain pesticide product container types from the residue removal label requirements; in§§ 156.140(a) and (b) and § 156.144(a) by revising the introductory paragraphs to account for the new exemptions, and in § 156.159 by extending the compliance date by a year, and changing the phrase ''distributed or sold'' to ''released for shipment'' as associated with the compliance date.

The rest of this unit describes the comments on the proposed changes to 40 CFR part 156 and any changes EPA made to the proposed language in response to public comments. Unless otherwise indicated, EPA is adopting the changes as proposed.

A. Definitions Section

The Agency proposed adding a new definitions section at § 156.3, consisting of introductory text and a definition for ''dilutable.'' One commenter supported the proposed definition of ''dilutable.'' Another commenter pointed out that EPA proposed an exemption for transport vehicles in § 156.144(g) but only defines ''transport vehicle'' in § 165.3. To facilitate the understanding of the use of the term ''transport vehicle'' in 40 CFR part 156 subpart H, EPA will include the definition of ''transport vehicle'' in 40 CFR part 156 as well. Therefore, the Agency is adopting the proposed § 156.3, including the definition for ''dilutable'' and adding the definition for ''transport vehicle'' from § 165.3. In addition, EPA is making an editorial change to the second sentence of the introductory paragraph to improve clarity. In particular, EPA is changing the phrase ''the following terms shall apply'' to ''the following terms shall have the meanings set forth below.''

B. Label Language Identifying the Container Type

The Agency proposed to create a list (in § 156.140(a)(5)) of nonrefillable container types exempt from the ''identification of container type'' labeling requirements that identify the container as nonrefillable (§ 156.140(a)(1)) and prohibit or limit its reuse (§ 156.140(a)(2)). The Agency also proposed a provision in § 156.140(c) that would allow waivers and modifications of any of the ''container

type'' label requirements on a case-by-case basis and asked for comments on the approach of specifically exempting certain container types while also allowing waivers and modifications on a case-by-case basis.

Seven commenters were in support of adding a list of container types exempt from the nonrefillable container type and reuse statements. A few commenters suggested that, instead of having a long list of exempt container types, the Agency should exempt package types through guidance documents, a Pesticide Registration Notice, or the EPA's web site. The Agency has decided to keep a list in the rule (in § 156.140(a)(5)) of container types that are exempt from the nonrefillable container type and reuse statements. The Agency intends to maintain on the EPA pesticide program web site (*www.epa.gov/pesticides* under the subject ''Pesticide Container and Containment Rule'') summaries of modification and waiver decisions made pursuant to § 156.140(c).

EPA is also making two editorial changes to the proposed introductory text of § 156.140(a)(5) to improve clarity. Specifically, EPA is changing the phrase ''in the following nonrefillable containers'' to read ''in the following types of nonrefillable containers, and their packaging'' and the phrase ''in this section'' to read ''of this section.''

Four commenters suggested changes and additions to the container types that were proposed to be exempt from the requirements to have ''Nonrefillable container'' and reuse statements on their labels.

One commenter requested that the Agency specifically exempt products in polyethylene sleeve packages whose contents would need to be mixed with water. The commenter explained that the product user fills a container (such as a bucket) with water, opens a portion control packet and empties the entire contents into the water in the container. The portion control packet is not designed to be resealed and it does not appear likely to be reused. Although EPA considers this container type within the scope of the existing exemption for ''any package destroyed by the use of the product contained,'' the commenter asked EPA to specifically exempt this container type for clarity. The Agency has identified the rodenticide placepack as a similar type of product, in that it is also a portion control packet and in packaging destroyed by use of the product contained.

The Agency believes that one-time use portion control packets are sufficiently common that a specific exemption may assist the regulated community, even if not strictly necessary. Therefore, the Agency is exempting ''one-time use portion control packets, such as polyethylene sleeve packages or rodenticide placepacks'' from the nonrefillable container type and reuse statements in the final rule by adding this container type to the list of exempt container types in § 156.140(a)(5).

One commenter suggested that the proposed list lacks a major segment of bait station containers. This commenter suggested adding language to include ''prefilled, non-refillable ant, roach and termite insecticide bait stations not intended to be opened or activated in a manner that exposes the contents to human contact'' which includes any child-resistant bait station. Another commenter suggested that the term ''tamper-resistant bait station'' is generally used for rodent control products while ''child resistant packaging'' is generally used for insecticide bait stations. Therefore, the commenter suggested changing ''tamper-resistant bait stations'' to ''tamper-resistant insecticide and rodenticide bait stations.''

The Agency has decided to change ''tamper-resistant bait stations'' to ''one-time use bait stations.'' One-time use bait stations more clearly describes the category of products EPA intended to exempt: bait stations for any pest that are not designed to be refilled and usually cannot be opened without causing significant damage to them. Distinctions between tamper-resistant and child-resistant packaging, or between target pests, are not relevant to this exemption. ''Tamper-resistant cages for repellent or trapping strips'' is also being changed to ''one-time use cages for repellent or trapping strips'' for the same reasons.

For consistency, EPA is also changing the phrases ''nonrefillable'' and ''single use'' to ''one-time use'' in the description of other container types in § 156.140(a)(5). For clarity, EPA is also changing the last phrase in the description of caulking tubes and other squeezable tubes from ''for paste, gel, or other similar formulas'' to ''for paste, gel, or other similar substances.''

Shortly after the comment period, EPA received questions that highlighted other container types that could also be considered inherently nonrefillable. First, devices are exempt from registration under FIFRA section 3, but are subject to some of the requirements set forth in FIFRA and 40 CFR (per 40 CFR 152.500), including the label requirements in 40 CFR part 156. The labeling requirements added to 40 CFR part 156 by the container and containment rule were primarily intended to address the risks of chemical residues in containers, and generally are not relevant to devices. Second, another commenter pointed out that cattle ear tags are similar to pet flea and tick collars and therefore they should also be exempted from the requirements in §§ 156.140(a)(1) and (a)(2). For both types of products, the plastic matrix releases a pesticide active ingredient over time while on the animal and cannot be reused or ''reloaded'' with the pesticide active ingredient. Although these two comments were not submitted on time, EPA agrees that these products should be exempted from the labeling requirements to identify a container as a nonrefillable container and a reuse statement. Accordingly, EPA is exempting devices and ''animal ear tags, such as cattle ear tags'' from §§ 156.140(a)(1) and (a)(2). EPA is exempting ''animal ear tags, such as cattle ear tags'' so that the same exemption will apply in similar situations for other animals.

Therefore, EPA is revising proposed § 156.140(a)(5) to exempt pesticide products in the following container types, and their packaging, from the requirements to have statements on the label regarding ''Nonrefillable containers'' in § 156.140(a)(1) and ''reuse'' in § 156.140(a)(2):

- Aerosol cans;
- Devices as defined in 40 CFR 152.500;
- One-time use caulking tubes and other one-time use squeezable tube containers for paste, gel, or other similar substances (e.g., crack and crevice application devices, unit dose application tubes);
- Foil packets for water soluble packaging, repellent wipes, and other one-time use products;
- One-time use portion control packets, such as polyethylene sleeve packages or rodenticide placepacks;
- One-time use bait stations;
- One-time use cages for repellent or trapping strips;
- Pet collars or animal ear tags, such as cattle ear tags;
- One-time use semiochemical dispersion devices;
- Any container that is destroyed by the use of the product contained; and
- Any container that would be destroyed if reuse of the container were attempted (for example, bacteriostatic water filter cartridges, blister cards, etc).

The Agency notes that for products described in the list above, the label may be on the container itself, on outer packaging, or both. The Agency believes

that neither the listed containers nor their outer packaging presents the type of risks addressed by the ''Nonrefillable container'' statement in § 156.140(a)(1) and the reuse statement in § 156.140(a)(2), and therefore intends that the exemption of these product or container types should apply to both the container itself and any outer packaging. To make this consistent for all of the exempted products, EPA has moved the references to packaging into the introductory paragraph of § 156.140(a)(5), so that the outer packaging of any exempt container is also exempt. For these same reasons, the Agency is deleting ''packaging'' from the exemption for ''packaging for pet collars,'' as proposed and replacing the term ''packaging'' with the term ''container'' in §§ 156.140(a)(5)(x) and (a)(5)(xi).

EPA also notes that by specifying in § 156.140(a)(5) certain products as ''one-time use'' the Agency does not intend to suggest that other exempted products are not required to be one-time use products. All products that are eligible for the § 156.140(a)(5) exemption must be one-time use containers (as the § 165.3 definition of nonrefillable container specifies that they be ''designed and constructed for one-time use''). For most products exempted by § 156.140(a)(5) (e.g., aerosol cans, packaging destroyed by use), restating the one-time use limitation would serve no purpose. However, for products where both one-time use and multiple use versions are common (i.e., bait stations, cages and semiochemical dispersion devices), EPA has included the ''one-time use'' designation as a reminder for persons subject to these regulations. Lastly, EPA is changing the introductory sentence in § 156.140(a)(5) as proposed from ''*Exemptions*. Pesticide products packaged in the following nonrefillable containers are exempt from the requirements in paragraphs (a)(1) and (a)(2) in this section:'' to ''*Exemptions*. Pesticide products in the following types of nonrefillable containers, and their packaging, are exempt from the requirements in paragraphs (a)(1) and (a)(2) of this section:''. EPA is deleting ''...packaged...'' from the proposed text and adding ''...and their packaging...'' to make it clear that the exemption applies to the container itself and any outer packaging, as discussed above. EPA is also changing the proposed text by adding ''...types of...'' in front of ''nonrefillable containers'' for clarity and changing ''in this section'' to ''of this section'' for consistency.

Also, the Agency did not propose to automatically exempt these container types from the requirement to have a statement about recycling/reconditioning because the Agency wants to facilitate recycling wherever feasible. One commenter had a different opinion and remarked that a label statement encouraging recycling could conflict with the requirements of local recycling programs, noting that aerosol containers are not accepted by many recycling programs. EPA is aware of some local recycling programs that are designed to accept aerosol containers, and EPA believes that recycling programs generally are expanding and that it is important to encourage recycling where available. Moreover, the recycling statements in § 156.140(a)(3) take availability of a recycling program into account, such as ''Offer for recycling if available.'' Finally, as discussed below, registrants will now have the option of applying for a waiver from the recycling label statement requirement if recycling is not appropriate for a specific container or product. For these reasons, the Agency has decided not to automatically exempt these containers from the recycling/reconditioning statement.

In § 156.140(b), EPA is finalizing the proposed changes and one additional change suggested by a commenter. To improve clarity, EPA is changing the beginning of the second sentence from ''If placed on the label, it must be...'' to ''If placed on the label, the statement must be...''

In § 156.140(c), the Agency proposed to add a new paragraph that would allow EPA, on a case-by-case basis, to modify or waive any of the label statements required by § 156.140. This paragraph is being added to § 156.140(c) as proposed. One commenter suggested exempting package types through guidance documents or making the ''nonrefillable container'' statement optional for certain package types because of the burden to request waivers and the Agency to review waivers. Another commenter suggested keeping a list through a Pesticide Registration Notice or on EPA's web site so that repeat requests would not have to be made on the same container types. Lastly, another commenter supported the modification/waiver provision as long as it was in addition to the list of exempt product container types in 40 CFR 156.140(a)(5). The Agency intends to maintain on the EPA pesticide program web site (*www.epa.gov/pesticides* under the subject ''Pesticide Container and Containment Rule''), summaries of decisions on requests for modifications and waivers.

In § 156.140(d), the Agency proposed to exempt from the label statements required in § 156.140, pesticide-impregnated clothing or other repellent-impregnated objects that are registered as pesticides and are not packaged in a container. One commenter requested that this exemption be expanded to all objects registered as pesticide products but not packaged in a container. The commenter explained that there are objects registered as a pesticide that are not ''pesticide-impregnated'' and, with technology advancing, there will be innovations in pesticide delivery systems. One example given was EPA's registration of copper alloy as an antimicrobial pesticide that can be fabricated into objects such as hospital bed railings. The commenter maintained that the same considerations the Agency is giving to repellent-impregnated fabric objects should apply to copper alloy as well as other future objects. Another commenter recommended an editorial change that would generally exempt ''repellent-impregnated fabric objects'' while giving clothing, tents or mosquito netting as examples.

Based on these comments, EPA reconsidered the exemption for pesticide-impregnated objects that are registered as pesticides and are not packaged in a container as proposed. Upon re-evaluation, EPA believes that it is more appropriate to revise this paragraph to exempt pesticidal articles from all of the label statements required by § 156.140. Note that while § 152.25(a) exempts from all requirements of FIFRA certain articles treated with a pesticide to protect the article itself, this new § 156.140(d) provides a more narrow exception to a broader class of articles. As discussed above for devices, the container and containment labeling requirements in 40 CFR part 156 were primarily intended to address the handling of chemical residues in containers. The Agency expects that any packaging or shipping containers for pesticidal articles would have minimal chemical residues, so it is not necessary or appropriate for the labels of these pesticides to have the same container handling statements. EPA believes that the specific pesticide products that were identified in the proposed exemption, including repellent-impregnated clothing and other repellent-impregnated fabric articles, such as tents or mosquito netting, are also exempted by the exemption for pesticidal articles in § 156.140(d).

This new exemption complements the existing exemption in § 152.25(a) in that it addresses pesticidal articles that do not qualify for the § 152.25(a) exemption. Section 152.25(a) provides a complete exemption from all requirements of FIFRA for qualifying

articles or substances treated with, or containing a pesticide, if: (1) the incorporated pesticide is registered for use in or on the article or substance, and; (2) the sole purpose of the treatment is to protect the article or substance itself. To qualify for the treated articles exemption, both conditions stated above must be met. If both are not met, the article or substance does not qualify for the exemption and is subject to regulation under FIFRA. Articles that meet both criteria in § 152.25(a) are exempt from all requirements of FIFRA, including the labeling requirements in 40 CFR part 156. Where a pesticidal article does not meet both criteria, the article is subject to regulation under FIFRA and therefore must be registered as a pesticide product and comply with all of the FIFRA requirements. The purpose of § 156.140(d) is to exempt these articles from the identification of container type label statements in § 156.140.

EPA acknowledges that there are likely to be situations where the identification of container type label statements would not be appropriate for a specific pesticide, such as objects registered as pesticide products but not packaged in a container, as described by the commenter. Some of these situations may be covered by the exemption for pesticidal articles in § 156.140(d). However, some of the pesticide products identified by the commenter may not be exempted by § 156.140(d). Because EPA expects that the number of these situations is small, EPA believes that they can be handled effectively by the modification/waiver provision in § 156.140(c) and through the pesticide registration process.

Shortly after the comment period, EPA received a question about why transport vehicles were not proposed to be exempted from the refillable container type statements in § 156.140(b) similar to the proposal to exempt transport vehicles from the residue removal label statements. The commenter pointed out that the same logic applies to the refillable container type statement and the residue removal requirement – that the label language is not tailored to the unique nature of transport vehicle containers. EPA agrees that transport vehicles are generally intended to be refilled with other pesticides or other chemicals so it does not make sense for the labels of pesticides that are distributed only in transport vehicles to include the statement ''Refillable container. Refill this container with pesticide [or common chemical name] only. Do not reuse this container for any other purpose.'' Therefore, EPA is adding a new exemption in § 156.140(e) that exempts transport vehicles from the requirements in that section.

C. Residue Removal Instructions

As proposed, EPA is adding three exemptions from the residue removal instruction requirements in § 156.144. EPA has modified the proposed exemption for compressed gas cylinders to eliminate unneeded language about container types. In its final form, the exemption from the residue removal instruction requirements applies to all pesticides that are gases, regardless of container shape. EPA believes that this improves the clarity and covers all of the containers, including compressed gas cylinders that were covered by the proposed exemption.

In § 156.144(f), the Agency also proposed to exempt pesticide-impregnated objects that are registered as pesticides (and not packaged in a container) from the residue removal requirements. The Agency is revising the exemption in § 156.144(f) in the same way as in § 156.140(d), for the reasons discussed above.

EPA revised the exemption for transport vehicles in § 156.144(g) for clarity and to be consistent with the format in § 156.140(e) and the other exemptions in § 156.144. In addition, it is no longer appropriate to include the parenthetical example of a transport vehicle because the full definition of transport vehicle is being added to § 156.3. EPA believes that the transport vehicle exemption in the final rule has the same effect as the proposed exemption, but is more straightforward and easier to understand.

D. Compliance Date

The Agency proposed changing the compliance date in § 156.159 for labeling requirements, from August 17, 2009 to August 17, 2010, and replacing the phrase ''distributed or sold'' with ''released for shipment.'' Section 156.159 was proposed to read:

> 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.

The Agency received seven comments supporting the proposed 1–year extension of the compliance date for labeling requirements and replacing ''distributed or sold'' with ''released for shipment.'' Several of these commenters were concerned that the proposed language could be interpreted to mean that on August 17, 2010 registrants would have to re-label all products that had been previously released for shipment. As discussed above, EPA has revised the proposed definition of ''released for shipment'' to clarify that, for purposes of FIFRA, the action of releasing a product for shipment occurs only once for a given pesticide product, and that a product remains in the condition of ''released for shipment'' unless subsequent activities constitute production. Also, for clarity and consistency, EPA is changing the proposed language by replacing ''all'' with ''any'' in ''...all pesticide products released for shipment...'' and ''have labels'' with ''must bear a label'' in ''...must have labels that comply with...''. In addition, the Agency is adopting the following language to make it clear that the label requirements will apply only to products released for shipment after the compliance date:

> Any pesticide product released for shipment by a registrant after August 16, 2010 must bear a label that complies with §§ 156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146, and 156.156.

Thus, pesticide products released for shipment on or before August 16, 2010 are not required to comply with the requirements cited in the sentence above. Similar changes have been made to the compliance date and associated language for nonrefillable containers in § 165.20(c). In § 165.40(c) and § 165.60(c) the Agency is changing the language regarding ''released for shipment'' and the compliance date from ''As of August 16, 2011...'' to ''...after August 16, 2011.'' The compliance date is being changed by one day so that all compliance dates will be ''...after August 16th...'' to help avoid confusion.

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

EPA proposed a number of changes to the container and containment regulations in part 165 to provide clarification and to correct editorial and other errors. Unless otherwise indicated, EPA is adopting the changes as proposed.

For consistency, the Agency is changing the proposed introductory language ''In addition, as used in this part, the following terms shall apply.'' by replacing the term ''apply'' with the phrase ''have the meanings set forth below.'' In addition to adopting the proposed changes to the definitions in 165.3, the Agency is making editorial changes by renaming ''Pesticide compatible'' as applied to containment as ''Pesticide compatible as applied to containment'' and ''Pesticide compatible'' as applied to containers as ''Pesticide compatible as applied to containers.'' The Agency is making

other editorial changes as suggested by one commenter to the definitions of ''Pesticide compatible as applied to containment'' and ''Suspension concentrate.''

EPA is adopting the language as proposed with one minor revision suggested by a commenter, by replacing the word ''capacity'' with ''capability'' to avoid confusion with the new definition of ''capacity.''

The Agency proposed to use the existing definition for ''flowable concentrate'' but rename it as ''suspension concentrate'' as suggested by stakeholders. The proposed definition for ''suspension concentrate'' was ''...a stable suspension of active ingredients in a liquid intended for dilution with water before use.'' A commenter pointed out that as written, it could include capsule suspension (microencapsulated) as well as flowable concentrates, but to apply only to flowable concentrates it should read ''...a stable suspension of solid particulate active ingredients...'' The Agency is making this change as suggested because rinsing data shows that microencapsulated formulations are not as difficult to remove as stable suspensions of solid particulate active ingredients. Also, ''flowable concentrate'' is being replaced with ''suspension concentrate'' in § § 165.25(f)(2) and 165.27(b)(5).

The Agency is changing the following existing definitions in § 165.3 as suggested by a commenter: ''dry pesticide,'' ''nonrefillable container,'' ''rinsate,'' and ''washwater.''

The original definition of ''dry pesticide'' was ''...any pesticide that is in solid form and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowable powders, granules, and dry baits.'' The list is being changed by replacing ''dry flowable powders'' with ''dry flowables'' and by adding ''water-soluble powders.'' A commenter explained that pesticide formulations described as ''dry flowable'' are formulated into small granules, not powder. ''Water-soluble powders'' is being added to the list because it is an example of a dry pesticide.

The original definition of ''nonrefillable container'' provided, in part, that they be ''for one time containment of a pesticide for sale or distribution.'' A commenter suggested that the term ''containment'' was used inappropriately in this definition because ''containment'' is used elsewhere in the container and containment rule to refer to various structures intended to contain spills, washwater, etc. To avoid any confusion, EPA is amending the definition for ''nonrefillable container'' by replacing ''one time containment of a pesticide for sale or distribution.'' with ''one-time use and is not intended to be filled again with a pesticide for sale or distribution.''

The original definition of ''rinsate'' was ''...the liquid produced from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.'' The Agency is amending the definition to replace ''produced'' with ''resulting'' to avoid any confusion with the definition of ''produced'' as defined in FIFRA. Similarly, the original definition of ''washwater'' was ''...the liquid produced from the rinsing of the exterior of any equipment or containers that have or may have come in direct contact with any pesticide or system maintenance compound.'' The Agency is also amending the definition of ''washwater'' by replacing ''produced'' with ''resulting,'' and by adding examples of such liquids (i.e., such as oil or antifreeze).

The Agency is changing the language associated with the compliance date in § 165.20(c), § 165.40(c), and § 165.60(c) to be consistent with the revision in § 156.159, for the reasons discussed above. In addition, the Agency is changing the compliance date in § 165.40(c), and § 165.60(c) so that they all read ''...after August 16,...'' regardless of the year. The Agency is correcting errors in §§ 165.25(a), 165.25(b)(1), and 165.25(b)(2), as proposed, as well as in § 165.45(b)(2) by changing ''part 107 subpart B'' to read ''49 CFR part 107 subpart B.''

A commenter suggested that EPA provide a more detailed reference for the EPA test procedure ''Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers'' cited in § 165.25(f)(1). The Agency considered this suggestion, but decided not to revise the regulatory text because the protocol is readily available. It is in the docket for the final rule and the Agency intends to keep it posted on the EPA pesticide program web site (*www.epa.gov/pesticides* under the subject ''Pesticide Container and Containment Rule''). EPA is correcting an error made in the proposed change to § 165.43(e)(1), by replacing ''is'' with ''if'' in the phrase that reads in part ''...to prevent an unreasonable adverse effect on the environment is all of the following conditions exist:''

In addition to making these changes, EPA is making several changes in 40 CFR part 165 in response to a commenter. Those changes are: inserting the specific regulations referenced (49 CFR parts 171-180) in § 165.45(e) and adding ''or'' as in ''equal to or greater than'' in § 165.45 (f). As suggested by a commenter, for consistency EPA is replacing ''stationary liquid pesticide container,'' with ''stationary container of liquid pesticides,'' ''stationary dry pesticide container'' with ''stationary container of dry pesticides,'' ''stationary liquid pesticide containment'' with ''secondary containment units for stationary containers of liquid pesticides,'' and ''stationary dry pesticide containment'' with ''secondary containment units for stationary containers of dry pesticides'' in § 165.45(f); § 165.85(c), (d) and (f); and § 165.87(c), (d) and (f).

EPA is changing slightly the wording of § 165.60(c) as proposed. The phrase ''must have been repackaged'' is changed to read ''must be repackaged.'' This change is being made for clarity since § 165.60 contains the general provisions of Subpart D – Standards for Repackaging Pesticide Products into Refillable Containers.

EPA is making minor editorial changes in § 165.67(d) and § 165.70(e)(5)(i) by replacing the word ''referenced'' with the word ''referred to.'' EPA is correcting a mistake made in proposed § 165.85(a)(3) and 165.87(a)(3) where the word ''able'' had been omitted in the proposed language the phrase ''compatible means to withstand'' is corrected to read ''compatible means able to withstand.''

In discussions with stakeholders, EPA was asked to consider a change to § 165.90(a)(5). The Agency's intention of requiring lockable valves on stationary pesticide containers (if required by § 165.45(f)) was to mitigate the risks associated with vandalism and theft. The Agency agrees with stakeholders that locking the entrances to the facility when it is unattended would achieve the same purpose. Therefore, the EPA is amending § 165.90(a)(5) to state that, when lockable valves are required, the owner or operator of a facility must ensure that the lockable valves on stationary containers are locked or that the facility itself is locked, whenever the facility is unattended.

EPA has also decided to amend § 165.90(b)(2) to expressly include weather among the factors relevant to determining whether repairs are completed ''within a time frame that is reasonable.'' EPA has always understood that weather affects operators' ability to seal cracks and gaps in a containment structure or appurtenances, and is making this explicit in the regulation.

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 at *http://www.regulations.gov* under docket identification number EPA–HQ–OPP–2005–0327. The Agency has prepared an addendum to these EAs to address the changes in the estimated impacts resulting from this final 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 finalized, 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 section 25(a), the Agency submitted a draft of this final 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 SAP and the Secretary of Agriculture waived review of this final 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 final 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 final 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 (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule does not have a significant adverse economic impact on a substantial number of small entities. This final 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 final 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 final 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 an amendment to that rulemaking, EPA has determined that this determination also applies to this final rule. As such, ''small entity'' for purposes of the addendum EA prepared for this final rule, is synonymous with ''small business.'' Using the size standards established by the Small Business Administration, ''small businesses'' potentially impacted by this final 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 vary from 100 or fewer workers (e.g., NAICS code 422910, Farm Suppliers Wholesalers) to 1,000 or fewer workers (e.g., NAICS code 325188, Inorganic Chemical Manufacturing), with the majority of small businesses having 500 or fewer workers (e.g., NAICS code 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 (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This rule 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. As explained in Unit VI., EPA estimates

that the amendments being finalized will reduce the annual estimated costs of the pesticide container and containment regulations by approximately $0.23 to $0.32 million due to a reduction in the number of labels that would need to be revised. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Because State, local, and tribal governments are rarely pesticide applicants or registrants, this rule is not expected to affect small governments.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this final 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 rule.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 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 a ''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 regulations. This action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

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: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule amends the existing container and containment regulations to extend the compliance date for the label changes, provide certain exemptions to label language requirements, and make changes to improve the clarity of the regulations. None of these changes affect the level of protection provided to human health or the environment by the container and containment regulations.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 152 and 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: October 17, 2008.

Stephen L. Johnson,

Administrator.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 152—[AMENDED]

■ 1. The authority citation for part 152 continues 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 by adding alphabetically a definition for ''Released for Shipment'' to read as follows:

§ 152.3 Definitions.

* * * * *

Released for shipment. A product becomes released for shipment when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment. Products stored in an area where finished products are ordinarily held for shipment, but which are not intended to be released for shipment must be physically separated and marked as not yet released for shipment. Once a product becomes released for shipment, the product remains in the condition of being released for shipment unless subsequent activities, such as relabeling or repackaging, constitute production.

* * * * *

PART 156—[AMENDED]

■ 3. The authority citation for part 156 continues to read as follows:

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

■ 4. Add § 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 have the meanings set forth below.

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.

Transport vehicle means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode.

■ 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), (d) and (e) 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), (d), and (e) 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 in the following types of nonrefillable containers, and their packaging, are exempt from the requirements in paragraphs (a)(1) and (a)(2) of this section:

(i) Aerosol cans.

(ii) Devices as defined in § 152.500 of this chapter.

(iii) One-time use caulking tubes and other one-time use squeezable tube containers for paste, gel, or other similar substances.

(iv) Foil packets for water soluble packaging, repellent wipes, and other one-time use products.

(v) One-time use portion control packets, such as polyethylene sleeve packages, or rodenticide placepacks.

(vi) One-time use bait stations.

(vii) One-time use cages for repellent or trapping strips.

(viii) Pet collars or animal ear tags, such as cattle ear tags.

(ix) One-time use semiochemical dispersion devices.

(x) Any container that is destroyed by the use of the product contained.

(xi) Any container 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), (d), and (e) of this section. If placed on the label, the statement 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 articles.* Pesticidal articles that are not exempted from FIFRA regulation by § 152.25(a) of this chapter are exempt from the requirements of this section.

(e) *Exemption for transport vehicles.* Transport vehicles are exempt from the requirements of this section.

■ 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 gases.* Pesticide products 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 articles.* Pesticidal articles that are not exempted from FIFRA regulation by § 152.25(a) of this chapter are exempt from the residue removal instruction requirements in this section through § 156.156.

(g) *Exemption for transport vehicles.* Transport vehicles are exempt from the requirements in this section through § 156.156.

■ 7. Revise § 156.159 to read as follows:

§ 156.159 Compliance date.

Any pesticide product released for shipment by a registrant after August 16, 2010 must bear a label that complies 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 will 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'', ''Dry pesticide'', ''Nonrefillable container''.

■ c. By revising the introductory text of the definition of ''Pesticide compatible'' which immediately follows the definition for the term ''Owner''.

■ d. By revising the definition of the term ''Pesticide compatible'' which immediately precedes the definition of the term ''Pesticide dispensing area.''

■ e. By revising the definition of the terms ''Rinsate'', and ''Washwater.''

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

■ g. 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 have the meanings set forth below.

* * * * *

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.

Dry pesticide means any pesticide that is in solid form and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowables, water-soluble powders, granules, and dry baits.

* * * * *

Nonrefillable container means a container that is not a refillable container and that is designed and constructed for one-time use and is not intended to be filled again with a pesticide for sale or distribution. Reconditioned containers are considered to be nonrefillable containers.

* * * * *

Pesticide compatible as applied to containers means that the container construction materials will not chemically react with the formulation. A container is not compatible with the formulation if, for example, the formulation:

* * * * *

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

* * * * *

Rinsate means the liquid resulting from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

* * * * *

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

* * * * *

Washwater means the liquid resulting from the rinsing of the exterior of any equipment or containers that have or may have come in direct contact with any pesticide or system maintenance compound, such as oil or antifreeze.

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

§ 165.20 General provisions.

* * * * *

(c) *When do I have to comply?* Any pesticide product packaged in a nonrefillable container and released for shipment by you after August 16, 2009 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) to read 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 paragraphs (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 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 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 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 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 49 CFR 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 through 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?* Any pesticide product packaged in a refillable container and released for shipment by you after August 16, 2011 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) and the heading of paragraph (e) and (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 exempted 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 if 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 paragraph (d) of this 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), (b), (e), the introductory text of paragraph (f) and paragraph (f)(2) 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 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

* * * * *

(e) *What standards for openings do my refillable containers have to meet?* If your refillable container is a portable pesticide container that is designed to hold liquid pesticide formulations and is not a cylinder that complies with the DOT Hazardous Materials Regulations in 49 CFR parts 171-180, each opening of the container other than a vent must have a one-way valve, a tamper-evident device or both. A one-way valve may be located in a device or system separate from the container if the device or system is the only reasonably foreseeable way to withdraw pesticide from the container. A vent must be designed to minimize the amount of material that could be introduced into the container through it.

(f) *What standards do my stationary pesticide containers have to meet?* If a stationary pesticide container designed to hold undivided quantities of pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide is located at the refilling establishment of a refiller operating under written contract to you, the stationary pesticide container must meet the following standards:

* * * * *

(2) Each stationary container of liquid pesticides must meet all of the following standards:

(i) Each stationary container of liquid pesticides must be equipped with a vent or other device designed to relieve

excess pressure, prevent losses by evaporation, and exclude precipitation.

(ii) External sight gauges, which are pesticide-containing hoses or tubes that run vertically along the exterior of the container from the top to the bottom, are prohibited on stationary containers of liquid pesticides.

(iii) Each connection on a stationary container of liquid pesticides that is below the normal liquid level must be equipped with a shutoff valve which is capable of being locked closed. A shutoff valve must be located within a secondary containment unit if one is required by subpart E of this part.

* * * * *

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

§ 165.60 General provisions.

* * * * *

(c) *When do I have to comply?* Any pesticide product repackaged into a refillable container and released for shipment by you after August 16, 2011 must be 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 referred to 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 referred to 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 paragraph (a)(3),the introductory text of paragraph (c), paragraphs (c)(1), (c)(2), (d)and (f) 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 able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

* * * * *

(c) *For new secondary containment units for stationary containers of liquid pesticides and new containment pads in pesticide dispensing areas, what are the capacity requirements?* These are the capacity requirements:

(1) New secondary containment units for stationary containers of liquid pesticides, if protected from precipitation, must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other

containers and appurtenances within the unit.

(2) New secondary containment units for stationary containers of liquid pesticides, if exposed to or unprotected from precipitation, must have a capacity of at least 110 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

* * * * *

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

* * * * *

(f) *For new secondary containment units for stationary containers of dry pesticides, what are the specific design requirements?* These are the specific design requirements for new secondary containment units for stationary containers of dry pesticides:

(1) The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

(2) Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(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 containers of dry pesticides 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 paragraph (a)(3),the introductory text of paragraph (c), paragraphs (c)(1), (d)and (f) 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 able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

* * * * *

(c) *For existing secondary containment units for stationary containers of liquid pesticides and existing containment pads in pesticide dispensing areas, what are the capacity requirements?* These are the capacity requirements:

(1) Existing secondary containment units for stationary containers of liquid pesticides must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

* * * * *

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

* * * * *

(f) *For existing secondary containment units for stationary containers of dry pesticides, what are the specific design requirements?* These are the specific design requirements for existing secondary containment units for stationary containers of dry pesticides:

(1) The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

(2) Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(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 containers of dry pesticides 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), (a)(5), (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.

* * * * *

(5) Ensure that each lockable valve on a stationary pesticide container, if it is required by § 165.45(f), is closed and locked, or that the facility is locked, whenever the facility is unattended.

* * * * *

(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 factors such as the weather, and 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.

* * * * *

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