

EPA's Proposed Pesticide
Container Recycling Rule:
Objectives, Status, Issues at Stake

**The Pesticide Stewardship Alliance Conference
February 27, 2007**

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- Recycling rate
- Geographic coverage
- Other issues and challenges

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I. Objectives Problem Statement

- An estimated 43 million pounds of disposable HDPE pesticide containers are used annually in agricultural & professional specialty markets. Pesticide users must recycle or dispose of the containers.
 - Disposing of HDPE wastes a valuable resource.
 - Disposal options (burning, dumping, landfilling) have specific drawbacks.
 - Some pesticide users face constraints on disposal options; recycling may be their only legal option.
- Container recycling can be an important contributor to achieving public health and environmental protection goals. Recycling results in cleaner containers because inspection step motivates pesticide users to properly rinse containers.
- A successful voluntary stewardship program that has recycled plastic pesticide containers for nearly 15 years is at risk of collapse because not all registrants participate financially. ACRC collects all industry plastic, even that belonging to non-members.
- Don't want to move backwards. If existing system fails:
 - 8 million pounds of plastic would be landfilled, burned or dumped.
 - Could lose or disrupt existing infrastructure; partnerships among pesticide registrants, retailers, states, extension, industry trade associations & end users.



I. Objectives

Goals of Proposed Rule

- Protect human health and the environment by ensuring that pesticide users in the agricultural and professional specialty pesticide markets have **access to fair and sustainable container recycling programs**.
- **Stabilize** current pesticide container recycling system.
- Recycle between 8.6 million and 22.5 million pounds of HDPE pesticide or pesticide-related product containers each year.
- Ensure that pesticide containers are recycled into **appropriate plastic end uses**.
- Support industry **product stewardship** activities consistent with Administration stewardship initiatives and principles.
- Respond to requests from state pesticide agencies & industry leaders for a partnership effort to promote sound container management.



I. Objectives **Build on Container & Containment Rule**

- Final Pesticide Container & Containment Rule (August 2006) laid the groundwork for this proposed rule
- One goal: **facilitate** container disposal and **recycling**
 - Establishes a “cleanability” standard to ensure that containers come clean when they are properly rinsed.
 - Labels will be revised to:
 - Require pesticide users to rinse promptly
 - Provide a detailed description of proper rinsing procedures
 - Include a statement promoting recycling (or reconditioning)
- Another goal: **encourage** the use of **refillable containers**
- Although rule requires protective practices, it alone does not change behavior or ensure compliance. The availability of a recycling option **compliments the rule requirements and promotes safe practices.**



II. Status Outreach and Reg Development Activities

- Initial scoping: Gathered data, completed legal analysis, considered range of approaches including non-regulatory & statutory options
- Identified regulatory solution as best approach; began **rule development process** to ensure safety & stewardship goals.
 - Formed work group, developed Analytic Blueprint, obtained Early Guidance from upper management.
 - Collected information and developed policy options on key issues; obtained initial direction from upper management (Option Selection)
- Completed **initial analysis** of **small business** impact.
- **Conducted outreach** to give early notice, gauge reaction and/or collect data from stakeholders.
 - States (AAPCO, SFIREG, individual states)
 - Pesticide registrants, retailers & end users
 - For both agricultural & professional specialty pesticides
 - ACRC, TPSA, recycling organizations
 - Environmental groups

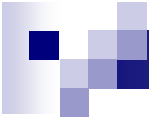


II. Status Congressional Interest

House Appropriations Committee Report Language H.R. 109-465 (page 113, 2006)

The Committee commends the Agricultural Container Recycling Council for its development of a voluntary program for recycling agricultural and professional specialty pesticide containers. This program has facilitated the proper disposal of millions of plastic pesticide containers at no cost to farmers. The EPA has been developing regulations on this recycling and, to ensure the program remains a viable, free service that is available to agricultural producers, the Committee **expects EPA to issue a final rulemaking on the recycling of high density polyethylene pesticide containers within 60 days of enactment of this Act.**

- ❖ Demonstrates Congressional recognition of value of recycling in attaining statutory goals and that EPA has authority to require container recycling under existing statutory language.



II. Status **Schedule (2006-2007)**

Accelerated schedule: publish proposed rule in 2007 (current target: October 31)

Dec Jan Feb Mar Apr May June July Aug Sept Oct

<-----X-----> **Draft rule & economic analysis**

<-----> **Final Agency Review**

<----> **Resolve issues & revise rule**

<-----> **EPA processing & review**

OMB Review <----->

Revise rule <->

EPA processing & review, Administrator signature <----->

Publish proposed rule in Federal Register X



II. Status

General Rule Approach

To ensure a rule that protects human health and the environment, we have developed the following principles as the framework:

- **Mandatory for agricultural & professional specialty pesticide registrants** to support recycling programs.
- Recycling **VOLUNTARY for retailers and pesticide users.**
- Programs meet **ANSI/ASABE** container recycling consensus **standard.**
- Performance-based approach: Each registrant putting HDPE containers into stream of commerce is responsible for recycling at a minimum **recycling rate.**
- Minimize **operational overhead** for EPA, possibly through a third party certification system
 - Goal is a light federal presence, e.g., receive simple reports
 - Looking at approaches modeled elsewhere that require parties gaining benefit to pay for certification through well-established ANSI-accredited process
- Allow registrants enough **flexibility** to tailor program to their circumstances.

III. Issues

- Scope of rule
 - Which pesticides?
 - Which containers?
 - Which businesses?
 - Size of registrants?
- Recycling rate
- Geographic coverage
- Other issues and challenges





III. Issues **Scope of Rule: Requirement**

Proposed Approach

- A registrant must recycle an amount of HDPE that is X% of its previous year's weight of HDPE pesticide containers in a pesticide container recycling program that:
 - Complies with the ANSI/ASABE Standard S596 *Recycling Plastic Containers from Pesticides and Pesticide-Related Products* and
 - Is certified by an ANSI-accredited third party organization as being in compliance with the ANSI/ASABE Standard S596.
- A registrant may operate its own recycling program, participate in a joint program or rely on an independent program.



III. Issues **Scope of Rule: Which Pesticides?**

- The proposed rule would apply to **agricultural and professional specialty** pesticides.
 - Agricultural: pesticides labeled for use in nursery or greenhouse or for use in production of an agricultural commodity
 - Professional specialty: pesticides used by professional end users in turf, ornamental, pest control, aquatic and terrestrial vegetation management and other non-food/fiber applications
- Proposed rule would **NOT** apply to other products, including:
 - Home and garden pesticides
 - Institutional and industrial antimicrobial pesticides
 - Adjuvants that are added to the spray mix (pesticide-related products), although containers of these products can be collected & would count toward meeting the recycling rate.



III. Issues **Scope of Rule: Which Containers?**

- **Proposed rule would apply to pesticide containers that are:**
 - Nonrefillable containers (defined in container rule)
 - High density polyethylene (HDPE)
 - 55 gallons or smaller.
- **By limiting the scope to these containers, would the rule push the industry to use other kinds of containers?**
 - Refillable containers
 - Other kinds of material



III. Issues **Scope of Rule: Which Businesses?**

- Proposed rule would establish requirements for:
 - **Pesticide registrants**
 - Organizations that are part of a **pesticide container recycling program**, i.e., that:
 - Inspect & collect containers
 - Store, transport or process (shred, bale, wash, etc.) the containers/plastic
 - Manufacture plastic products from the recycled plastic
 - **Third party certifying organizations**
- Proposed rule would not establish requirements for:
 - Pesticide retailers
 - Pesticide end users
 - Adjuvant manufacturers/formulators



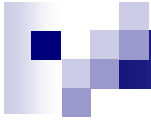
III. Issues **Scope of Rule: Size of Registrants?**

- EPA is required to evaluate whether there are significant impacts on small businesses that justify special consultation & consideration of tailored requirements.
- Conducted an **initial economic & small businesses analysis**, which showed no Significant Impact on a Substantial Number of Small Entities (SISNOSE).
 - Additional annual compliance costs expected to be less than 1% of revenues for firms of all sizes.
- From a policy perspective, **which registrants should be subject to the rule to achieve the intended goals of the rule?** (especially the goal of stabilizing existing pesticide container recycling system)

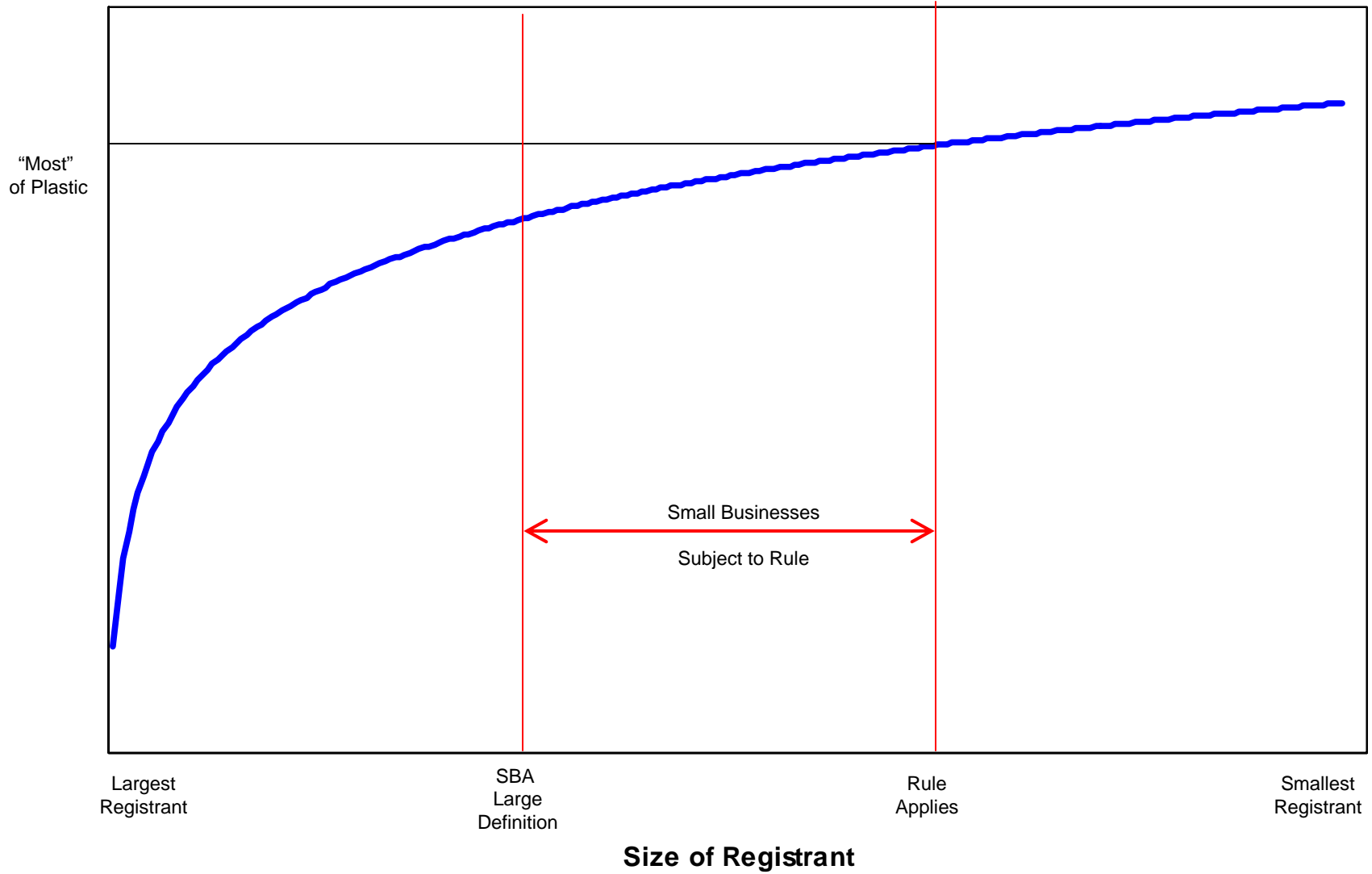


III. Issues **Scope of Rule: Size of Registrants?**

- Profile of pesticide registrants from economic analysis of container & containment rule
 - Total of about 1,800 registrants (150 large by SBA definition)
 - In agricultural sector, about 700 registrants
- Proposal: **All agricultural & professional specialty pesticide registrants subject to rule.**
- Proposal: Discuss the **option of exempting the smallest businesses from final rule** for comment and to solicit data. Administrative burdens of including the smallest entities may not be worth de minimus public health & environmental benefits. Could be based on:
 - Number of employees or revenues
 - Number of pesticide registrations or pesticide sales
 - Amount of plastic used in containers



Cumulative Pounds of Plastic





III. Issues **Recycling Rate: Definition of Rate**

- To ensure adequate effort by registrants, proposed rule would specify a mandatory minimum recycling rate.
- **Recycling rate** =
Pounds of HDPE (pesticide & pesticide-related product cntrs) recycled

Pounds of HDPE used in pesticide containers
- Recycling vs. recovery
 - Recycling: series of activities by which discarded materials are collected, sorted, processed and converted into raw materials and used in the production of new products; excludes use of these materials for energy production
 - Recovery: removal (capture) of materials from the waste stream for diversion from disposal into recycling, composting, reuse or energy recovery.
- Pesticide containers vs. pesticide-related product containers.
 - Reality in the field: collect pesticide and pesticide-related product containers from pesticide users
 - Should denominator also include pesticide-related products?



III. Issues **Recycling Rate: What is current rate?**

- **Information we know** (2001-2004):
 - On average, ACRC recycled 7.25 million lbs of HDPE per year
 - On average, ACRC member companies used 18.05 million lbs HDPE in pesticide containers per year
 - The amount of HDPE recycled by ACRC was equivalent to about 40% of the amount of HDPE used by those companies each year.

- **Estimate** of annual quantity **of all pesticide containers**:
 - Agricultural pesticides: 38 million lbs
 - Professional specialty pesticides: 5 million lbs
 - The amount of HDPE recycled by ACRC was equivalent to about 17% of the estimated total of 43 million lbs of HDPE used in agricultural & professional specialty pesticide containers.



III. Issues **Recycling Rate: Other Recycling Programs**

- Researched and analyzed **other recycling programs** to identify an appropriate rate, including:
 - Pesticide containers: ACRC (U.S.), Canada, Brazil
 - Plastic containers (consumer): California & Oregon
 - Other: European directive on packaging; U.S. recycling rates for municipal solid waste
- None are exactly the same as program that would be established by proposed rule. Differences include:
 - Materials that are recycled
 - Who participates and whether voluntary or mandatory
 - Recycling vs. recovery
 - Level of oversight, role of government
- Analysis of other programs provides:
 - Insights into steps/factors to achieve certain rates;
 - Distinctions among existing programs;
 - Basis for evaluating pros & cons of potential rates.



III. Issues **Recycling Rate: What should it be?**

- Proposed rule will discuss a **range of potential rates: 20% - 50% in increments of 10%**
- All of these rates would achieve goals of:
 - Protecting human health & environment by providing pesticide users access to fair and sustainable pesticide container recycling programs and
 - Stabilizing the current pesticide container recycling system.
- Proposal will discuss pros and cons of each possible rate to facilitate comment and will request information.
- Proposal will also discuss different approaches for increasing the recycling rate in the future.



III. Issues Geographic Coverage: Why does it matter?

- States want recycling to be **available in every state**.
- There is **an economic incentive** for recycling programs to focus on areas of intensive agriculture.
 - In ACRC's program, 70% of plastic comes from 11 states; half of that comes from CA, TX and MS.
- Setting a minimum rate would not ensure/facilitate access to recycling programs by pesticide users nationwide.
- Tradeoff between local benefits of recycling instead of disposal (less open burning or dumping) and global benefits of recycling in general (energy savings, reduction in greenhouse gases)
- Related to the recycling rate.



III. Issues **Geographic Coverage: Proposal**

- **Proposed rule will not include a geographic coverage requirement.**
 - Leave it to the market. Flexible, most cost-effective
- Proposal will discuss **options for geographic coverage** rqmts that could be included in **final rule**. Request comments and additional information.
 - Broad nationwide coverage: Collect containers in every state where the registrant does business.
 - State commitment: Collect containers in every state if state commits to some activities as a recycling partner.
 - De minimus exclusion: Collect containers in every state except those excluded by de minimus criterion (pesticide sales? pesticide usage? # applicators?)
 - Extra credit: Collect containers in every state but get extra credit for plastic in certain states (e.g., every lb collected in MT counts as 3 lbs in calculating rate).



III. Issues **Other Issues and Challenges**

- **Professional specialty pesticide market:**
 - Currently no/very little recycling and no existing infrastructure to support recycling
 - Considering ways to provide more time for professional specialty market to “ramp up”:
 - Longer phase-in time and/or lower initial recycling rate
- Difficult to **quantify the benefits**
 - Fewer containers burned, dumped or landfilled
 - Containers cleaner because they must pass inspection
- **Precedent:** EPA’s first mandatory recycling std
- Schedule and resources



IV. Wrap Up

- Publish proposed rule in 2007 and final rule about a year after
- Proposal will describe many options for final rule: public comments and additional information will be key in decision making for final rule



Attachments

Continuum of Potential Container Recycling Activities

NON-REGULATORY	REGULATORY	STATUTORY
<p>Do Nothing More – maintain technical involvement & support.</p>	<p>General Rule requiring participation in container recycling program by some/all Ag or specialty registrants.</p>	<p>Budget Rider requiring participation in container recycling program.</p>
<p>Support Development of Model State Law subsequently enacted at state level.</p>	<p>Detailed Rule requiring participation in container recycling program by some/all Ag or specialty registrants.</p>	<p>FIFRA amendment requiring participation in container recycling program.</p>
<p>Encourage Public Relations Incentives: Award/Recognition for recycling participants; allow participants to make recycling claims on label.</p>	<p>Establish specific Label Restrictions requiring container recycling.</p>	<p>Require collection of fees to cover recycling costs – PRIA amendment.</p>
<p>Encourage phase-out of disposable containers.</p>		<p>Mandate phase-out of disposable containers.</p>