

**EPA's Pesticide Container and  
Containment Rule:  
Objectives, Status and Implementation**

**The Pesticide Stewardship Alliance Conference**

**February 27, 2007**

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# Overview

- ◆ **Objectives/Background**
- ◆ **Status: Container and Containment Rule**
- ◆ **Implementation**
  - ◆ Determinations of state adequacy for residue removal regulations
  - ◆ Determinations of equivalency of state containment regulations
  - ◆ Compliance strategy
  - ◆ How to comply guidance
  - ◆ Implement label changes

# Container & Containment Rule: FIFRA Mandate

- ◆ **FIFRA Section 19(e): Mandates regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides**
  - ◆ The regulations shall...accommodate procedures used for removal of pesticides and rinsing the containers and facilitate the safe use, safe disposal and safe refill and reuse of containers.
- ◆ **Section 19(f): Mandates regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal**
  - ◆ The regulations may... specify procedures & standards providing for triple rinsing or the equivalent; specify procedures that can be implemented promptly & easily; provide for reuse of rinse water & residue; and be coordinated with RCRA.
  - ◆ EPA may exempt household use products from the requirements of this subsection.

# Purpose of the Rule

## ◆ Containers

- ◆ Minimize human exposure during container handling
- ◆ Facilitate container disposal & recycling
- ◆ Encourage use of refillable containers



## ◆ Containment

- ◆ Protect environment from releases at bulk storage sites
- ◆ Protect environment from spills & leaks at refilling & dispensing operations



# History and Key Dates

- 1988 FIFRA section 19 mandates container regs**
- 1993 EPA makes interim determinations that states have adequate programs to enforce residue removal rqmts**
- 1994 Proposed rule published**
- 1999 Supplemental notice published**
- 2004 Comment period reopened**
- 2006 Final rule published!!!**
- 2007 States (with regs) may submit request to implement state containment regs in lieu of federal requirements**
- 2008 EPA determines that states have adequate programs to ensure compliance with the residue removal requirements**
- 2009 Compliance required with nonrefillable container, label & containment requirements**
- 2011 Compliance required for refillable container & repackaging requirements**

# Final Rule & Significant Changes

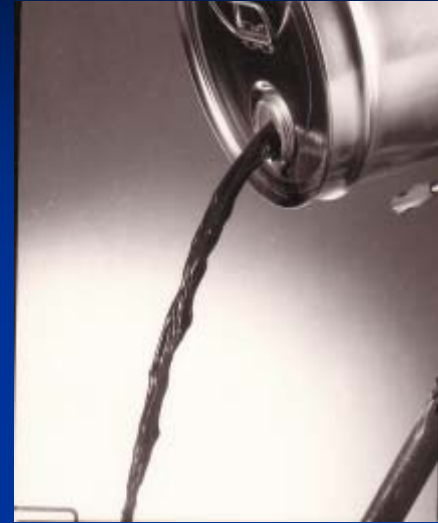
- ◆ **We made many changes from the proposed rule based on comments, additional information and reassessment**
  - ◆ Reduced scope of container regs (exempt most antimicrobial pesticides)
  - ◆ Less stringent standards for the least toxic pesticides
  - ◆ Revised residue removal standard and reduced testing requirements
  - ◆ Deleted hydraulic conductivity standard for containment
  - ◆ Accommodate states with existing containment regulations
  - ◆ Extended compliance date for all parts of rule
- ◆ **Lower total annual costs for final rule (\$11.3 million) than proposed rule (\$53.0-\$68.4 million)**

# Scope, Applicability & Timing: Final Rule

Category	Nonrefillable Containers	Refillable Containers	Repackaging Products	Container Labeling	Containment Structures
Who must comply?	Registrants	Registrants	Registrants Refillers	Registrants Users	Ag retailers Ag comm apps Ag custom bldr
Products that must comply	All products other than manufacturing use products (MUPs), plant-incorporated protectants (PIPs) and exempt antimicrobials. - If Toxicity Category I or II or Restricted Use Pesticide (RUP): must comply with all standards. - If not, must comply only with basic DOT integrity standards.	All products other than MUPs, PIPs and exempt antimicrobials. Some exceptions for swimming pool antimicrobials.	All products other than MUPs, PIPs and exempt antimicrobials. Some exceptions for swimming pool antimicrobials.	All products. Some exceptions for PIPs and household pesticides.	Agricultural products
Compliance Date	Aug 16, 2009	Aug 16, 2011	Aug 16, 2011	Aug 16, 2009	Aug 16, 2009

# Nonrefillable Containers: Final Rule

- ◆ Requirements for products in Tox Categories 1 & 2 and RUPs
  - ◆ DOT container design, construction & marking stds
    - ◆ Basic integrity, testing & others at packing group III level
  - ◆ Standard closures (ag pesticides only)
  - ◆ Dispensing capability (liquid/5 gal or smaller)
  - ◆ Residue removal standard (dilutable/rigid, 5 gal or smaller)
  - ◆ Can request waiver from any standard
  - ◆ Recordkeeping
- ◆ Requirements for products in Tox Categories 3 & 4 (not RUPs)
  - ◆ DOT container design, construction & marking stds
    - ◆ Basic integrity only



# Refillable Containers: Final Rule

- ◆ DOT container design, construction & marking standards
  - ◆ Basic integrity, testing & others at packing group III level
- ◆ Marked with serial number/identifying code
  - ◆ Swimming pool antimicrobials exempt from this rqmt
- ◆ Tamper-evident device or one-way valve on each opening (portable containers for liquids)
  - ◆ Swimming pool antimicrobials exempt from this rqmt
- ◆ Stationary containers ( $\geq 500$  gal or 4,000 lbs)
  - ◆ Integrity, vent, shut off valve, prohibit external sight gauge
- ◆ Can request waiver from the referenced DOT standards



# Repackaging: Final Rule

- ◆ Applies to registrants and refillers (registrants, distributors, retailers)
- ◆ Registrants
  - ◆ Authorize refillers to repackage their product
  - ◆ Develop and provide certain information
- ◆ Refillers
  - ◆ Obtain and follow registrant info
  - ◆ Inspect, clean and label containers
- ◆ Recordkeeping for registrants and refillers
  - ◆ Swimming pool antimicrobials exempt from some recordkeeping



# Labeling: Final Rule

- ◆ **Identify container as nonrefillable or refillable**
  - ◆ Plant incorporated protectants (PIPs) exempt
- ◆ **Re-use & recycling/reconditioning statements + batch code**
  - ◆ For all nonrefillables except PIPs
- ◆ **Cleaning instructions for nonrefillables: triple rinsing and option to include pressure rinsing**
  - ◆ Applies to rigid containers with dilutable pesticides
  - ◆ Household products exempt
- ◆ **Cleaning instructions before final disposal**
  - ◆ All refillable containers



# Containment: Final Rule

- ◆ **Applies to agricultural pesticides only**
- ◆ **Required for retailers, custom blenders & commercial applicators but NOT farms**
  - ◆ based on evidence of contamination
  - ◆ no data received to expand scope
- ◆ **Containment structures that are included:**
  - ◆ **Stationary containers must be in secondary containment**
    - ◆ If capacity is equal to or more than 500 gal liquid or 4,000 lbs dry and at a facility 30 days or more
  - ◆ **Dispensing areas must have pad if:**
    - ◆ Refillable containers are emptied or cleaned
    - ◆ Agricultural pesticides are dispensed from a stationary container for any purpose or from a transport vehicle or any other container to fill a refillable container



# Containment: Final Rule

<b>Requirements for Existing Structures</b>	<b>Requirements for New Structures</b>
<b>Materials compatible with pesticides; rigid and liquid-tight structure</b>	<b>Same</b>
<b>Protect appurtenances from damage; enough freeboard to prevent run-on</b>	<b>Same</b>
<b>Must seal appurtenances, outlets &amp; drains through base or walls</b>	<b>No appurtenances, outlets &amp; drains through base or walls allowed</b>
<b>Liquid secondary containment: anchor or elevate all containers</b>	<b>Same</b>
<b>Secondary containment capacity: 100% largest container indoors or outdoors</b>	<b>Secondary containment capacity: 100% largest container indoors: 110% largest container outdoors</b>
<b>Dry containment: protect from wind &amp; precipitation;</b>	<b>Same</b>
<b>Pad capacity: 750 gallons or volume of largest container; cover area under container</b>	<b>Same</b>
<b>Pad: no requirement for sloped surface</b>	<b>Surface of pad sloped to sump</b>

# Implementation of Final Rule

- ◆ **Implement communication plan**
  - ◆ **Web page, announcements, meetings and conference calls with stakeholders**
- ◆ **Determine state program adequacy - residue removal requirements**
- ◆ **Determine state program equivalency – containment**
- ◆ **Develop compliance strategy**
- ◆ **Finalize how-to-comply guides**
- ◆ **Implement label changes**
- ◆ **Handle registrant waiver requests**
- ◆ **Develop guidance as needed**

# Implementation Time Line

Category	2006	2007	2008	2009	2011
FIFRA 19(f)(2) Adequacy [All states]		<ul style="list-style-type: none"> <li>- EPA publishes criteria &amp; procedure</li> <li>- State submits package on adequate program</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Temporary determination of adequacy expires on Aug 16, 2008</b></li> <li>- EPA makes final determination</li> </ul>		
Regulatory Standards	Final rule published on Aug 16, 2006	EPA distributes compliance strategy for whole rule		Comply with NR cntr, label & cnmt rqmts by Aug 16, 2009	Comply with ref cntr & repack rqmts by Aug 16, 2011
Containment Equivalency [States with containment rules]		<ul style="list-style-type: none"> <li>- EPA distributes policy/procedure</li> <li>- <b>State submits letter &amp; documentation of equivalency by Aug 16, 2007</b></li> </ul>	EPA authorizes or declines state's ability to continue implementing state regs instead of EPA's regs		

# 1. Determinations of State Adequacy: Residue Removal

- ◆ **FIFRA Section 19(f)(2): Effective beginning 5 yrs after the effective date of this subsection [1988], a state may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the administrator determines that the state is carrying out an adequate program to ensure compliance with this subsection.**
- ◆ **FIFRA Section 19(f) mandates regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal.**
- ◆ **Draft policy answers the following four questions:**

## **A. What are the residue removal regulations?**

**The “procedures and standards for the removal of pesticides from containers prior to disposal” under FIFRA section 19(f) are:**

- 1) Nonrefillable container residue removal standard & associated recordkeeping;**
- 2) Repackaging regs: registrants must develop a cleaning procedure, provide it to refillers and keep a record of it;**
- 3) Repackaging regs: refillers must obtain the cleaning procedure and keep a record of it;**
- 4) Repackaging regs: refillers must clean refillable containers before putting pesticide into them, if cleaning is necessary; and**
- 5) Rinsing instructions on the labels of nonrefillable and refillable containers.**

**The containment requirements are NOT included.**

# B. How will states ensure compliance with the residue removal regulations?

Requirement	Inspection	Authority to take enforcement action
Registrant complies with nonrefillable container 99.99% std, testing & recordkeeping.	Inspection of registrant (producing establishment inspection)	State authority to take enforcement action or refer to EPA?
Registrant develops cleaning procedure for refillables, gives to refiller & keeps copy.	Inspection of registrant (producing establishment inspection)	State authority to take enforcement action or refer to EPA?
Refiller has cleaning procedure for refillables & keeps copy.	Inspection of refilling establishment (producing establishment inspection)	State authority to take enforcement action or refer to EPA?
Refiller cleans refillable container according to procedure, if required.	Inspection of refilling establishment (producing establishment inspection)	State authority to take enforcement action or refer to EPA?
Registrant has rinsing instructions on label.	Inspection of registrant (producing establishment inspection) or Marketplace inspection.	State authority to take enforcement action or refer to EPA?
Pesticide user rinses container using label instructions	Pesticide Use inspection	State law (use inconsistent with label). State would take enforcement action.

## **C. What criteria will EPA use to determine whether a state is carrying out an adequate program?**

**A state is carrying out an adequate program to ensure compliance with the residue removal regulations if:**

- 1) The state has authority to conduct the types of inspections needed for residue removal regulations.
  - ✓ Could be state authority and/or federal authority.
  - ✓ If federal (FIFRA), need inspectors with federal credentials.
- 2) The state has the capability (authority) to take enforcement action and/or a process to refer violations to EPA Region for enforcement action.
- 3) A state commits to develop a compliance strategy within 6 months after EPA distributes our final compliance strategy.
- 4) A state commits to conduct the outreach & communication program in its compliance strategy.

## **D. What is the process for making these determinations?**

**1) State sends submission to Region**

**2) Region reviews for completeness**

**Is the submission complete?**

- **If yes, move to #3.**
- **If no, Region returns submission to state with explanation. State completes submission and resends to Region.**

**3) Region consults with EPA HQ on the first determination and if necessary on subsequent determinations**

**4) Region determines if state meets criteria**

**Does state meet criteria for adequate program?**

- **If yes, move to #5.**
- **If no, Region returns to state with explanation. State revises submission and returns to Region.**

**5) Region informs state of decision and forwards submission to EPA HQ for inclusion in docket**

**6) EPA HQ publishes FR Notice with list of states that EPA has determined are carrying out adequate programs.**

# Issues/Questions

## ◆ Schedule

- ◆ **Jan 22 – Feb 9, 2007: State/region review of draft policy**
- ◆ **Mar/Apr 2007: Distribute final policy (FR Notice)**
- ◆ **Sep/Oct 2007: States send submission to Region**
- ◆ **July 1, 2008: Regions determine that states have adequate programs and forward state submissions to HQ**
- ◆ **Aug 1, 2008: EPA HQ publishes FR Notice with states that EPA has determined to have adequate programs.**
- ◆ **Aug 16, 2008: Deadline for making determinations (interim determinations expire)**

## ◆ Inspections

- ◆ **Can be done under state or federal authority/credentials**
- ◆ **Producing establishment inspections & confidential business information**
- ◆ **What if state has certification program but does not have primacy (no inspectors with federal credentials, no process for referring violations)?**
- ◆ **Do the criteria need to include specific information about level of effort?**
  - ◆ **Amount of outreach (certain number of mailings, meetings, compliance assistance inspections); number of inspections; number of inspectors with federal credentials; etc.**

## 2. Determinations of State Equivalency: Containment

- ◆ **States with containment regulations have the option of continuing to implement their own programs in lieu of these federal requirements**
- ◆ **By August 16, 2007 a state must submit:**
  - ◆ **Letter requesting authority to implement state regulations in lieu of EPA's regulations**
  - ◆ **Documentation that the state regs provide environmental protection equivalent to or more protective than EPA's regs**
  - ◆ **Any significant changes to state regs that would be necessary to meet the std of equivalent environmental protection and a timetable for making these changes**

# What is Equivalent Environmental Protection?

Description of equivalent environmental protection in draft policy:

- ◆ **State containment program provides environmental protection equivalent to federal containment regulations if state regulations achieve the same desired outcome of:**
  - ◆ **Protect human health & the environment from exposure to spills and leaks which may occur during container refilling or when a stationary container fails.**
- ◆ **Overall effect & function of the state regs must be same as the overall effect & function of federal regs.**
- ◆ **Acceptable for certain elements and requirements of the state regs to differ from federal rule.**

# What should be submitted to EPA?

**Draft policy - a state should submit the following in writing:**

- ◆ **A letter requesting authority to implement state regulations in lieu of EPA's regulations**
- ◆ **A copy of the state containment regulations (and related regulations)**
- ◆ **Copies of existing and relevant state containment documents, e.g., guidance, interpretations, additional information**
- ◆ **A statement explaining why the state regulations provide environmental protection equivalent to or more protective than EPA's regulations. At a minimum, this statement must describe:**
  - ◆ **The kinds of facilities that must comply;**
  - ◆ **The containers that must be in secondary containment;**
  - ◆ **When a pad is required;**
  - ◆ **Any elements of the federal regulations that are not addressed in the state regulations;**
  - ◆ **Elements of the state regulations that go beyond the federal regulations; and**
  - ◆ **How state regulations achieve the same desired outcome of protecting human health & environment from exposure to leaks & spills which may occur during container refilling or when a stationary container fails.**
- ◆ **If significant changes are needed to state regulations, identify such changes and estimated timetable for making them.**

# How will the determinations of equivalency for containment be made?

1) **State sends submission to OPP with cc: Region**

2) **OPP reviews for completeness**

**Is the submission complete?**

- **If yes, move to #3.**
- **If no, OPP returns submission to state with explanation. State completes submission and resends to OPP.**

3) **OPP forwards submission to Region & other offices to discuss submission and identify any issues**

**Does EPA have any questions or need additional info from the state?**

- **If no, move to #4.**
- **If yes, set up call with state, Region & other offices to resolve issues**

4) **OPP (with input from Region & other offices) makes determination of whether state containment regulations provide equivalent environmental protection compared to EPA's rule.**

**Are state containment regulations at least as environmentally protective as EPA's regulations?**

5) **OPP informs the state of its determination by letter.**

6) **OPP publishes FR Notice with list of states that have authorization to implement their own containment regulations in lieu of EPA's regulations.**

# Issues/Questions

## ◆ Draft Time Line

- ◆ **Mar 2007: Draft policy sent to regions & states for review**
  - ◆ **Apr 2007: Distribute final policy**
  - ◆ **Aug 16, 2007: States send submission to OPP**
  - ◆ **Dec 2007: OPP sends letter to states authorizing or declining to authorize the states to continue implementing state regulations**
  - ◆ **Aug 16, 2009: Compliance is required with EPA's containment regulations**
- ◆ **What about states that do not have containment requirements?**

# Other Implementation Activities

- ◆ **Develop compliance strategy**
- ◆ **Finalize how-to-comply guides**
- ◆ **Develop Q&As**
- ◆ **Implement label changes**
- ◆ **Handle registrant waiver requests**
- ◆ **Possible PREP course**
- ◆ **Revise Inspector Guidance**

# Schedule for Proposed Container Recycling Rule

**Accelerated schedule: publish proposed rule in 2007 (target: Oct 31)**

Dec    Jan    Feb    Mar    Apr    May    June    July    Aug    Sept    Oct

<-----> 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

# For More Information

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- ◆ **EPA web site**

  - ◆ **[www.epa.gov/pesticides](http://www.epa.gov/pesticides)**

  - ◆ **Select “Regulating pesticides”**

  - ◆ **Select “Storage and disposal”**

  - ◆ **Select “Container and containment regulations”**