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and antimicrobial products that are exempt under paragraph (c) of this section, all of the regulations in this subpart apply to a pesticide product if it satisfies at least one of the following criteria:

(i) The pesticide product meets the criteria of Toxicity Category I as set out in §156.62 of this chapter.

(ii) The pesticide product meets the criteria of Toxicity Category II as set out in §156.62 of this chapter.

(iii) The pesticide product is classified for restricted use as set out in §§152.160 - 152.175 of this chapter.

(2) Except for manufacturing use products, plant-incorporated protectants, antimicrobial products that are exempt under (c) of this section, and other pesticide products that are regulated under paragraph (e)(1) of this section, a pesticide product must be packaged in compliance with 49 CFR 173.24. If the pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the Department of Transportation requires it to be packaged according to 49 CFR parts 171-180.

(f) *What does "pesticide product" or "pesticide" mean in the rest of this subpart?* In §§165.25 through 165.27, 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 (e) of this section.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

§ 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 appli-

able 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.

(c) *What will EPA do if DOT proposes to change any of the cross-referenced regulations?* If the DOT proposes to change any of the regulations that are incorporated in paragraphs (a) and (b) of this section, EPA will provide notice of the proposed changes and an opportunity to comment in the FEDERAL REGISTER. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

(d) *What standards for closures do my nonrefillable containers have to meet?* If your nonrefillable container is a rigid container with a capacity equal to or greater than 3.0 liters (0.79 gallons), if the container is not an aerosol container or a pressurized container, and if the container is used to distribute or sell a liquid agricultural pesticide, each nonrefillable container must have at least one of the following standard closures:

(1) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 11.5

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threads per inch, National Pipe Straight (NPS) standard.

(2) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 5 threads per inch, buttress threads.

(3) Screw cap, 63 millimeters, at least one thread revolution at 6 threads per inch.

(4) Screw cap, 38 millimeters, at least one thread revolution at 6 threads per inch. The cap may fit on a separate rigid spout or on a flexible pull-out plastic spout.

(e) *What standards for dispensing do my nonrefillable containers have to meet?* If your nonrefillable container has a capacity of 5 gallons (18.9 liters) or less, if the container is not an aerosol container, a pressurized container, or a spray bottle, and if the container holds a liquid pesticide, your nonrefillable container must do both of the following:

(1) Allow the contents of the nonrefillable container to pour in a continuous, coherent stream.

(2) Allow the contents of the nonrefillable container to be poured with a minimum amount of dripping down the outside of the container.

(f) *What standards for residue removal do my nonrefillable containers have to meet?* Each nonrefillable container and pesticide formulation combination must meet the applicable residue removal standard of this section.

(1) If the nonrefillable container is rigid and has a capacity less than or equal to 5 gallons (18.9 liters) for liquid formulations or 50 pounds (22.7 kilograms) for solid formulations and if the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application (that is, if the pesticide is dilutable), each container/formulation combination must be capable of attaining at least 99.99 percent removal of each active ingredient when tested using the EPA test procedure "Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers."

(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.

(3) For the rigid container/dilutable product standard in paragraph (f)(1) of

this section, percent removal represents the percent of the original concentration of the active ingredient in the pesticide product when compared to the concentration of that active ingredient in the fourth rinse. Percent removal is calculated by the formula:

$$\text{percent removal} = [1.0 - \text{RR}] \times 100.0,$$

where

RR = rinsate ratio = Active ingredient concentration in fourth rinsate / Original concentration of active ingredient in the product

(g) *Can I obtain a waiver from or a modification to any of the nonrefillable container standards?* Yes, it is possible for you to obtain a waiver from or a modification to the nonrefillable container standards, as follows:

(1) EPA may waive or modify the requirements of paragraph (a) of this section regarding the DOT standards for pesticide products that are not DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (a) of this section.

(2) EPA may waive or modify the requirements of paragraph (b) of this section regarding the DOT standards for pesticide products that are DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (b) of this section. EPA will modify or waive the requirements of paragraph (b) of this section only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

(3) EPA may approve a non-standard closure (that is, a closure not listed in paragraph (d) of this section) if EPA determines that both of the following conditions are satisfied:

(i) The non-standard closure is necessary for the proper mixing, loading, or application of the pesticide product.

(ii) The non-standard closure offers exposure protection to handlers during mixing and loading that is the same or greater than that provided by the standard closures.

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(4) EPA may waive or modify the container dispensing capability standards in paragraph (e) of this section if EPA determines that at least one of the following conditions is satisfied:

(i) The product is typically removed from the container by a method other than pouring.

(ii) Compliance with the container dispensing capability standards would increase exposure to the pesticide container handler.

(5) EPA may waive or modify the requirements of paragraph (f) of this section regarding the residue removal standard if EPA determines that both of the following conditions are satisfied:

(i) The residue remaining in the container would not cause an unreasonable adverse effect on the environment; and

(ii) The product offers significant benefits and cannot be economically reformulated or repackaged.

(h) *How do I obtain a waiver from or a modification to any of the nonrefillable container standards?* To obtain a waiver from or a modification to any of the nonrefillable container standards, you must submit a written request for a waiver or a modification to the EPA to the following address: Office of Pesticide Programs (7504P); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. You cannot distribute or sell the pesticide product in a nonrefillable container that does not comply with all of the nonrefillable container standards unless and until EPA approves the request for the waiver or modification in writing. You must include two copies of the following information (which may be part of an application for registration or amended registration) with your written request:

(1) The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

(2) The name and EPA registration number of the pesticide product for which the waiver or modification is requested.

(3) A statement specifying the requirement or requirements from which you are requesting a waiver or a modification.

(4) A description of the nonrefillable container or containers for which the waiver or modification is requested.

(5) Documentation or justification to demonstrate that the applicable waiver or modification criteria in paragraph (g) of this section are satisfied.

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§ 165.27 Reporting and recordkeeping.

(a) *What information must I report about my nonrefillable containers?* You are not required to report to EPA with information about your nonrefillable containers under the regulations in this subpart. You should refer to the reporting standards in part 159 of this chapter to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

(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:

(1) The name and EPA registration number of the pesticide product.

(2) A description of the nonrefillable container(s) in which the pesticide product is distributed or sold.

(3) At least one of the following records to document compliance with the requirement for closures in § 165.25(d) for each nonrefillable container used to distribute or sell the pesticide product that must comply with § 165.25(d):

(i) A letter or document from the container supplier that describes the closure.

(ii) A specification about the closure in the contract between the registrant or applicant and the container supplier.