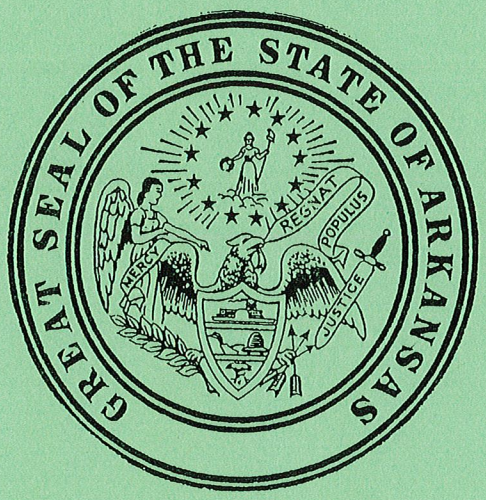
ARKANSAS PESTICIDE USE AND APPLICATION ACT
AND
REGULATIONS

ACT 389 of 1975 as amended



Pesticides perform a valuable role in protecting man and the environment including agricultural production from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be used properly to prevent unreasonable adverse effects on man and the environment.

Sec 20-20-202 (b)

ARKANSAS STATE PLANT BOARD

(Rev. 06/08)

CHAPTER 20
PESTS AND PESTICIDES

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Attachment I

CHAPTER 20
PESTS AND PESTICIDES

SUBCHAPTER I

GENERAL PROVISIONS

20-20-101. Date of manufacture stamped on cotton insecticides.

(a) Every person, firm, or corporation bagging any commercial cotton insecticide or poison shall stamp on each bag, or on a tag attached to each bag, the date on which the insecticide or poison was manufactured.

(b) Any person, firm, or corporation failing or refusing to comply with the requirements of this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than five dollars ($5.00) nor more than one hundred dollars ($100). Each bag or other container which is shipped without first having placed the date thereon shall be a separate offense.

SUBCHAPTER 2

ARKANSAS PESTICIDE USE AND APPLICATION ACT

20-20-201. Title

This subchapter shall be cited as the "Arkansas Pesticide Use and Application Act."

20-20-202. Legislative intent.

(a) The purpose of this subchapter is to regulate in the public interest the distribution, use, and application of pesticides to control pests as hereinafter defined.

(b) Pesticides perform a valuable role in protecting man and the environment including agricultural production from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be used properly to prevent unreasonable adverse effects on man and the environment.

(c) It is deemed necessary to provide for regulation of the distribution, use, and application of these pesticides.

20-20-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Animal" means all vertebrate and invertebrate species including, but not limited to, man and other mammals, birds, fish, and shellfish;

(2) "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial;

(3) "Certified applicator" means any individual who is certified under this subchapter to use or supervise the use of any restricted-use pesticide which is restricted to use by certified applicators;

(4) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

(5) "Commercial applicator" means:
   (A) A certified applicator, whether or not he is a private applicator with respect to some uses, who is engaged in the business and uses or supervises the use of any pesticide classified for restricted use or any other pesticide for any purpose on any lands or property other than as provided by subdivision (4) of this section;
   (B) Any person engaged in the business of aerial application of seeds or fertilizers on the lands of another;

(6) "Noncommercial applicator" means firms, persons, or government agencies who use, supervise the use, or demonstrate the use of any pesticide classified for restricted use and who do not qualify as a private applicator under subdivision (4) of this section nor require a commercial applicator's license under subdivision (5) of this section;

(7) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission;

(8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(9) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, receive, deliver, or offer to deliver pesticides in this state;

(10) "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these;

(11) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in land. The term shall not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making the pesticide application;

(12) "EPA" means the United States Environmental Protection Agency;

(13) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

(14) "Fungus" means any non-chlorophyll-bearing thallophytes, that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts, as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals, and except those on or in processed food, beverages, or pharmaceuticals;

(15) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example, spiders, mites, ticks, centipedes, and wood lice;

(16) "Labeling" means all labels and all other written, printed or graphic matter -
   (A) accompanying the pesticide or device at any time; or
   (B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications in the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(17) "Land" means all land and water areas including airspace and all plants, animals, structures, buildings,

contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including and used for transportation;

(18) "License" or "permit" means a written document issued by the State Plant Board or its authorized agent authorizing the purchase, possession, or use of certain pesticides, restricted-use pesticides, or state restricted- use pesticides;

(19) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and they may also be called nemas or eelworms;

(20) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(21) "Pest" means:
   (A) Any insect, rodent, nematode, fungus, weed; or
   (B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or other microorganisms on or in living man or other living animals, which EPA declares to be a pest under section 25(c)(1) of FIFRA, or which the State Plant Board declares to be a pest under § 20-20-206(e);

(22) "Pesticide" means:
   (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
   (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant;

(23) "Pesticide dealer" means any person who distributes restricted-use pesticides or pesticides whose uses or distribution are further restricted by the State Plant Board by regulation;

(24) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;

(25) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator of the EPA;

(26) "State restricted-use pesticide" means any pesticide or pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the State Plant Board determines, subsequent to a hearing, requires additional restrictions for that pesticide or pesticide use to prevent unreasonable adverse effects on the environment including man, land, beneficial insects, animals, crops, and wildlife other than pests;

(27) "Supervise" or "under the direct supervision of' means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied;

(28) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;

(29) "Weed" means any plant which grows where not wanted; and

(30) "Wildlife" means all living things that are neither human, domesticated nor, as defined in this subchapter, pests including, but not limited to, mammals, birds, and aquatic life.

20-20-204. Penalties.

(a)(1) Any commercial or noncommercial applicator, dealer, or pilot who violates any provision of this subchapter or the regulations adopted thereunder shall be guilty of a misdemeanor and upon conviction shall be punishable for the first offense by a fine of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000), for the second and any additional offense by a fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000).

(2) Any private applicator who violates any provision of this subchapter or the regulations adopted thereunder subsequent to receiving a written warning from the State Plant Board for a prior violation shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than one hundred dollars ($100) and not more than five hundred dollars ($500) for each offense. An offense committed more than three (3) years after a previous conviction or written warning shall be considered as a first offense.

(b) No state court shall allow the recovery of damages from administrative action taken if the court finds that there was probable cause for such action.

20-20-205. Administration of subchapter by State Plant Board.

(a) This subchapter shall be administered by the State Plant Board.

(b) The functions vested in the State Plant Board by this subchapter shall be considered to be delegated to the employees of the State Plant Board or its authorized representatives.

20-20-206. State Plant Board Powers and duties.

(a) The State Plant Board shall administer and enforce the provisions of this subchapter and shall have authority to issue regulations after a public hearing following due notice to all interested persons to carry out the provisions of this subchapter.

(1) Where the State Plant Board finds it necessary to carry out the purpose and intent of this subchapter, regulations may relate to the time, place, manner, amount, concentration, or other conditions under which pesticides may be distributed or applied and may restrict or prohibit use of pesticides in designated areas during specified periods of time to prevent unreasonable adverse effects by drift or misapplication to:

(A) Plants, including forage plants, or adjacent or nearby lands;
(B) Wildlife in the adjoining or nearby areas;
(C) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
(D) Humans, animals, or beneficial insects.

(2) In issuing regulations, the State Plant Board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources. The State Plant Board may by regulation require that notice of a proposed application of a pesticide be given to owners or persons in control of lands adjoining the property to be treated or in the immediate vicinity thereof if it finds that the notice is necessary to carry out the purpose of this subchapter.

(b) For the purpose of uniformity and in order to enter into cooperative agreements, the State Plant Board shall consider as restricted-use pesticides those uses or pesticides classified as such by EPA.

(1) In addition, the State Plant Board may declare certain pesticides or pesticide uses as state restricted-use pesticides when after investigation it finds and determines the pesticides or pesticide uses to be injurious to persons, animals, or vegetation other than the pest or vegetation which it is intended to destroy, or otherwise

requires additional restrictions under the conditions set forth in § 20-20-203(25).

(2) The sale or distribution of pesticides for such uses in Arkansas or their use in pest control or other operation is prohibited, except in accordance with such rules and regulations as may be made by the State Plant Board after a public hearing.

(3) The rules and regulations shall include rules and regulations which prescribe the time when and the conditions under which the materials may be used in different areas of the state.

(4) The State Plant Board in its rules and regulations may charge inspection, permit, and license fees sufficient to cover the cost of enforcement of this subsection.

(c) Regulations adopted under this subchapter shall not permit any pesticide use which is prohibited by FIFRA and regulations or orders issued thereunder.

(d) Regulations adopted under this subchapter as to applicators of restricted-use pesticides as designated under FIFRA shall not be inconsistent with the requirements of FIFRA and regulations promulgated thereunder.

(e) The State Plant Board, after notice and opportunity for hearing, is authorized to declare as a pest any form of plant or animal life, other than man and other than bacteria, virus, and other microorganisms on or in living man or other living animals, which is injurious to health or the environment.

(f) In order to comply with section 4 of FIFRA, the State Plant Board is authorized to make such reports to EPA in such form and containing such information as the agency may from time to time require.

20-20-207. Licenses - Classification - Standards.

(a)(1) The State Plant Board may classify or subclassify commercial and noncommercial licenses to be issued under this subchapter as may be necessary for the effective administration and enforcement of this subchapter. The classifications may include but not be limited to:
(A) Agricultural;
(B) Right-of-way;
(C) Forest;
(D) Aquatic; and
(E) Regulatory pesticide applicators.

(2) Separate subclassifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides or as to the use of pesticides to control insects and plant diseases, rodents, or weeds.

(3) Each classification shall be subject to separate testing procedures and requirements.

(b) The State Plant Board in promulgating regulations under this subchapter shall prescribe standards for the licensing of applicators of pesticides.

(1) The standards shall relate to the use and handling of the pesticides or to the use and handling of the pesticide or class of pesticide covered by the individual's license and shall be relative to the hazards involved.

(2) In determining standards, the State Plant Board shall consider:
(A) The characteristics of the pesticide formulation such as the acute dermal and inhalation toxicity and the persistence, mobility, and susceptibility to biological concentration;

(B) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;

(C) The relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial

applications, or air blast sprayer applications; and

(D) The extent of the intended use.

(c) Further, the State Plant Board is authorized to adopt standards in conformance with and at least equal to those prescribed by EPA and such additional standards as it deems necessary.

20-20-208. Licenses - Requirements generally - Exception.

(a) No person shall use or supervise the use of any restricted use pesticide which is restricted to use by certified applicators without that person first complying with the licensing requirements pursuant to § 20-20-209, § 20-20-210, § 20-20-211, or § 20-20-217 or other restrictions as determined by the State Plant Board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other person, for that specific pesticide use.

(b) No person working under the direct supervision of a certified applicator in accordance with § 20-20-203(26) shall be considered in violation of this section.

20-20-209. Licenses - Commercial applicators - Application.

(a) No commercial applicator as defined in § 20-20-203(5) shall engage in the business of applying restricted-use or other pesticides or the aerial application of seed or fertilizers to the lands of another at any time without a commercial applicator's license issued by the State Plant Board. Application for a license shall be made in writing to the State Plant Board on a designated form obtained from the State Plant Board. Each application for a license shall contain information regarding the applicant's qualifications, proposed operations, and license classification the applicant is applying for, and shall include the following:

(1) The full name of the person applying for the license;

(2) If different than subdivision (a)(1) of this section, the full name of the individual qualifying under subsection (b) of this section;

(3) If the applicant is a person other than an individual, the full name of the firm, partnership, association, corporation, or group;

(4) The principal business address of the applicant in this state or elsewhere;

(5) The name and address of a person, who may be the Secretary of State, whose domicile is in this state and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(A) Any nonresident applying for a license under this subchapter shall file a written and certified power of attorney designating an Arkansas resident or the Secretary of State as the agent of the nonresident upon whom service of process may be had in the event of any suit against the nonresident person. The power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the State of Arkansas over the nonresident applicant.

(B) The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents;

(6) A description of any equipment used by the applicant to apply pesticides; and

(7) Any other necessary information prescribed by the State Plant Board.

(b) The State Plant Board shall not issue a commercial applicator's license until the individual named in subdivision

(a)(2) of this section is qualified by passing an examination to demonstrate to the State Plant Board his knowledge of how to apply pesticides under the classifications applied for and his knowledge of the nature and effect of pesticides he may apply under the classifications. The scope of the examination may be prescribed by regulation.

(c) If the State Plant Board finds the applicant qualified to apply pesticides in the classifications he has applied for, if the applicant files evidence of financial responsibility required under subsection (d) of this section, if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Administration, and if the applicant has paid the license, test, and equipment fees prescribed by the State Plant Board in its regulations, the State Plant Board shall issue a commercial applicator's license limited to the classifications for which he is qualified.

(1) The license shall expire December 31 of each year unless it has been revoked or suspended prior thereto by the State Plant Board for cause. A license shall be automatically invalidated if a commercial applicator is at any time or for any reason left without an individual qualified under subsection (b) of this section.

(2) The State Plant Board may limit the license of the applicant to the use of certain pesticides, to certain areas, or to certain types of equipment if the applicant is only so qualified.

(3) If a license is not issued as applied for, the State Plant Board shall inform the applicant in writing of the reasons therefor.

(d)(1) The State Plant Board shall not issue a commercial applicator's license until the applicant has furnished evidence of financial responsibility with the State Plant Board consisting of one (1) of the following:

(A) A letter of credit from an Arkansas bank guaranteeing financial responsibility;
(B) A surety bond;
(C) An escrow account with an Arkansas bank; or
(D) An insurance policy or certification thereof of an insurer or surplus lines broker authorized to do business in this state insuring the commercial applicator and any of his agents against liability resulting from the operations of the commercial applicator, provided the insurance is not applied to damages or injury to agricultural crops, plants, or land being worked upon by the commercial applicator.

(2) The amount of liability as provided for in this section shall not be less than that set by the State Plant Board for each property damage and public liability including loss or damage arising out of actual use of any pesticide. The amount of liability shall be maintained at not less than that sum at all times during the licensing period. The State Plant Board shall be notified ten (10) days prior to any reduction in liability. The State Plant Board shall have authority to set deductible amounts on financial responsibility.

(3) Should the liability furnished become unsatisfactory, the applicant shall upon notice immediately execute new liability. If he fails to do so, the State Plant Board shall cancel his license and give him notice of the fact, and it shall be unlawful thereafter for the person to engage in the business of applying pesticides until the liability is brought into compliance with the requirements of this section and his license is reinstated.

(4)(A) Nothing in this subchapter shall be construed to relieve any person from liability for any damages to the person or lands of another caused by the use of pesticides even though the use conforms to the rules and regulations of the State Plant Board.

(B) The violation of any of the provisions of this subchapter by any commercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and the negligence shall be imputable as provided by existing law.

(e) The State Plant Board may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology.

(f) The provisions of this section relating to licenses and requirements for their issuance do not apply to persons applying pesticides for his neighbors provided he operates and maintains pesticide application equipment for his own use, he is not engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide

applicator, and he operates his pesticide application equipment only in the vicinity of his owned or rented property and for the accommodation of his neighbors. However, when the person uses or supervises the use of a restricted-use pesticide, the person shall comply with the requirements of § 20-20-210 or § 20-20-211.

20-20-210. Licenses - Noncommercial applicators.

(a) IN GENERAL. No noncommercial applicator as defined in § 20-20-203(6) shall use, supervise the use of, or demonstrate the use of a restricted-use pesticide without a noncommercial applicator's license issued by the State Plant Board.

(1) Application for the license shall be made on forms obtained from the State Plant Board and shall contain information regarding the applicant's qualifications, the proposed operation, and the license classification applied for, and the full name of the individual qualified or to be qualified by passing the examination described in § 20-20-209(b).

(2) If the State Plant Board finds the applicant qualified to apply pesticides in the classifications applied for and if the applicant has paid testing and license fees required by regulation, the State Plant Board shall issue a noncommercial applicator's license limited to the activities and classifications applied for.

(3) The license shall expire December 31 of each year unless it has been suspended or revoked prior thereto by the State Plant Board for cause.

(4) A license shall be automatically invalidated if a noncommercial applicator is at any time or for any reason left without an individual qualified under this section.

(5) If the State Plant Board does not qualify the noncommercial applicator under this section, it shall inform the applicant in writing of the reasons therefor.

(6) Fees may be waived for state, municipal, or other governmental agencies and their designated employees qualifying by examination.

(7) Noncommercial applicators shall be subject to legal recourse by any person damaged as the result of the application of any pesticide by the applicator. The violation of any of the provisions of this subchapter by any noncommercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation and such negligence shall be imputable as provided by existing law.

(b) LICENSE RENEWAL. The State Plant Board may renew the applicant's license under the classifications for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to insure a continuing level of competence and ability to use restricted-use pesticides safely and properly due to changing technology.

(c) EXEMPTION. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides, and doctors of medicine and doctors of veterinary medicine applying restricted-use pesticides as drugs or medication during the course of their normal practice.

20-20-211. Licenses - Private applicators.

(a)(1) IN GENERAL. No private applicator as defined in § 20-20-203(4) shall use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the State Plant Board, with such license being conditioned on the applicator complying with the certification requirements determined by the State Plant Board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons for the pesticide use.

(2) Application for a license shall be made in writing on a designated form obtained from the State Plant Board and shall contain the name and address of the applicant, the kind of agricultural commodity to be produced, information regarding the applicant's qualifications and proposed operations, and any other necessary information prescribed by the State Plant Board.

(b) CERTIFICATION STANDARDS. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or types of pesticides the private applicator is to be certified to use shall be relative to hazards involved. In determining these standards, the State Plant Board shall take into consideration the standards of EPA and is authorized to adopt by regulation these standards.

(c) License Issuance.

(1) If the board finds the applicant competent and if the applicant has paid any application fee of ten dollars ($10.00) for a one-year license or forty-five dollars ($45.00) for a five-year license, the board shall issue a private applicator's license limited to the operation described in the application.

(2) The board shall issue license for periods of one (1) or five (5) years at the option of the application. Each license shall expire one (1) or five (5) years from the issue date of the license, whichever is applicable, unless it has been suspended or revoked prior thereto by the board for cause. In order to support the program, at the end of the 2001 license period, the State Plant Board shall phase in the private applicator license renewal in a way to ensure that the program funding is equally distributed over the licensing period.

(3) A license shall be automatically invalidated if a private applicator is at any time or for any reason left without an individual determined to be competent under subsection (b) of this section.

(4) If a license is not issued as applied for, the board shall inform the applicant in writing of the reasons therefore.

(5) Private applicators shall be subject to recourse by any person damaged as a result of the application of any pesticide by the applicator.

(6) The violation of any of the provisions of this subchapter by any private applicator shall be primafacie evidence of negligence on the part of the person, firm, or corporation committing the violation, and such negligence shall be imputable as provided by existing law.

20-20-212. Licenses - Pilots.

(a) It shall be unlawful for any pilot to apply by means of an aircraft any pesticide, seed, or fertilizer in this state unless the pilot shall have a current valid license issued by the State Plant Board.

(b) The issuance of the license shall be conditioned on his filing an application in the form prescribed by the board stating his name and address, his Federal Aviation Administration commercial or private pilot's certificate number, and his meeting any other conditions as may be set by the board in its regulations.

(c) The application shall be accompanied by a fee as set by the State Plant Board in its regulations.

(d) Each pilot's license issued under this section shall expire on December 31 of each year.

20-20-213. Licenses - Pesticide dealers.

(a) It shall be unlawful for any person to act in the capacity of a restricted-use pesticides dealer, or advertise as, assume to act as a dealer of, or distribute any restricted-use pesticide at any time without first having obtained an annual license from the State Plant Board. This license shall limit distribution of restricted-use pesticides only to persons holding a current commercial applicator, noncommercial applicator, private applicator, or dealer's license.

(1) A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

(2) Pesticide dealer licenses shall expire December 31 of each year.

(b) Application for a pesticide dealer's license shall be on a form prescribed by the board and be accompanied by a fee as set by the State Plant Board in its regulations.

(c) Each licensed dealer outlet shall maintain a record of restricted-use pesticides distributed.

(1) The record shall contain the name, address, and license number of the commercial applicator, noncommercial applicator, private applicator, or dealer to whom distributed, the date of distribution, and the name and EPA registration number of the restricted-use pesticide distributed.

(2) The records shall be kept for a period of two (2) years and shall be available for inspection by the State Plant Board at reasonable times. The State Plant Board shall, upon request in writing, be furnished with a copy of the records immediately by the restricted-use pesticide dealer.

(d) Provisions of this section shall not apply to a commercial pesticide applicator who sells restricted-use pesticides only as an integral part of this pesticide application service when the pesticides are dispensed only through equipment used for such pesticide application or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

(e) Each pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. The dealer's license shall be subject to denial, suspension, or revocation after a hearing for any violation of this subchapter whether committed by the dealer or by the dealer's officer, agent, or employee.

20-20-214. Denial, suspension, revocation, or modification of licenses or permits - Grounds.

(a) The State Plant Board may suspend, pending inquiry, for not longer than ten (10) days, and, after opportunity for a hearing, may deny, suspend, revoke, or modify any license or permit, or any provision thereof, issued under this subchapter if it finds that the applicant or the holder of a license or permit has committed any of the following acts, each of which is declared to be a violation of this subchapter, or has been convicted of a criminal violation of FIFRA or has been the subject of a final order assessing a civil penalty for a violation of FIFRA.

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Made a recommendation for use or used a pesticide in a manner inconsistent with the labeling registered with EPA or the State Plant Board for that pesticide, or in violation of EPA or State Plant Board restrictions on the use of that pesticide;

(3) Applied known ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;

(5) Operated in a faulty, careless, or negligent manner;

(6) Neglected or, after notice, refused to comply with the provisions of this subchapter, the rules adopted hereunder, or of any lawful order of the State Plant Board;

(7) Refused or neglected to keep and maintain the records required by this subchapter or to make reports when and as required;

(8) Made false or fraudulent records, invoices, or reports;

(9) Engaged in the business of applying a pesticide on the lands of another without having a commercial applicator's license;

(10) Operated unlicensed equipment;

(11) Used fraud or misrepresentation in making application for, or renewal of, a license, permit, or certification;

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this subchapter, conspired with such a licensed or an unlicensed person to evade the provisions of this subchapter, or allowed one's license, permit, or certification to be used by another person;

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(15) Impersonated any federal, state, county, or other government official;

(16) Distributed any pesticide labeled for restricted use to any person unless the person or his agent has a valid license to use, supervise the use, or distribute restricted-use pesticides; or

(17) Applied any pesticide by aircraft without a pilot's license, or employed a pilot without a license to apply any pesticide by aircraft.

(b) Any person requiring a license or permit under this subchapter shall be subject to the penalties provided for by § 20-20-204.

20-20-215. Commercial and noncommercial applicator - Records.

(a) Commercial and noncommercial applicator licensees shall keep and maintain routine operational records containing information on the kinds, amounts, uses, dates, and places of application of pesticides.

(b) The records shall be kept for a period of two (2) years from the date of the application of the pesticide and shall be available for inspection by the State Plant Board at reasonable times.

(c) The State Plant Board shall, upon request in writing, be furnished with a copy of the records immediately by the commercial or noncommercial applicator.

20-20-216. Handling of pesticides and containers - Rules and regulations.

(a) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any waterway in any way harmful to any wildlife therein.

(b) The State Plant Board may promulgate rules and regulations governing the storing and disposal of pesticides or pesticide containers. In determining these standards, the State Plant Board shall take into consideration any regulations issued by EPA.

20-20-217. Inspection and licensing of equipment.

(a) The State Plant Board is authorized to inspect any equipment used or intended to be used for application of pesticides and may require repairs or other changes before its further use for pesticide application.

(b) Requirements for equipment may be adopted by regulation.

(c) Equipment specified by regulation shall be identified by a decal or similar marking furnished by the State Plant Board. The decal or marking shall be affixed in a location and manner upon the equipment as prescribed by the State Plant Board.

(d) Fees for the decal or similar marking shall be prescribed by the State Plant Board in its regulations.

20-20-218. Reports of accidents or incidents - Claims.

(a) The State Plant Board may by regulation require the reporting of significant pesticide accidents or incidents to a designated state agency.

(b) Any person claiming damages from a pesticide application shall have filed with the State Plant Board on a form prescribed by the State Plant Board a written statement claiming that he has been damaged.

(1) This report shall have been filed within forty-five (45) days after the date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that twenty-five percent (25%) of the crop has been harvested.

(2) The statement shall contain, but shall not be limited to, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred.

(3) The State Plant Board shall prepare a form to be furnished to persons to be used in these cases and such form shall contain any other requirements as the State Plant Board may deem proper.

(4) The State Plant Board shall, upon receipt of the statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of the statements as may be requested.

(5) The State Plant Board shall inspect damages whenever possible and when it determines that the complaint has sufficient merit, it shall make this information available to the person claiming damage and to the person who is alleged to have caused the damage.

(c) The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law. The failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action, nor shall the failure to file a report be a violation of this subchapter.

(d) Where damage is alleged to have occurred, the claimant shall permit the State Plant Board, the licensee, and his representatives, such as his insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that the damage may be examined. Failure of the claimant to permit observation and examination of the damaged lands shall automatically bar the claim against the licensee.

20-20-219. Enforcement.

(a)(1) For the purpose of carrying out the provisions of this subchapter, the State Plant Board may enter upon any public or private premises at reasonable times, in order to:

(A) Have access for the purpose of inspecting any equipment subject to this subchapter;

(B) Inspect or sample lands actually or reported to be exposed to pesticides, and lands from which the pesticides may have originated;
(C) Inspect storage or disposal areas;
(D) Inspect or investigate complaints of injury to humans or land;
(E) Sample pesticides being applied or to be applied; and
(F) Observe the use and application of pesticides.

(2) Should the State Plant Board be denied access to any land where access was sought for the purposes set forth in this subchapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to the land for the purposes set forth in this subchapter. The court may, upon such application, issue the search warrant for the purposes requested.

(b) The State Plant Board, with or without the aid and advice of the prosecuting attorney, is charged with the duty of enforcing the requirements of this subchapter and any rules or regulations issued pursuant to it. In the event a prosecuting attorney fails or refuses to act on behalf of the State Plant Board, the Attorney General may so act.

(c) The State Plant Board is authorized to apply to any court of competent jurisdiction for, and the court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provisions of this subchapter, or of the rules and regulations made under authority of this subchapter, the injunction to be without bond.

20-20-220. Subpoenas authorized.

The State Plant Board may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records anywhere in this state in any hearing affecting the authority or privilege granted by a license, certification, or permit issued under the provisions of this subchapter.

20-20-221. Judicial review.

(a) Any person aggrieved by any action of the State Plant Board may obtain a review thereof by filing in the circuit court within thirty (30) days of notice of the action a written petition praying that the action of the State Plant Board be set aside.

(b) A copy of the petition shall immediately be delivered to the State Plant Board, and within thirty (30) days thereafter, the State Plant Board shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received. The court shall then have jurisdiction to affirm, set aside, or modify the action of the State Plant Board, except that the findings of the State Plant Board as to the facts, if supported by substantial evidence, shall be conclusive.

20-20-222. Intergovernmental cooperation.

The State Plant Board may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state to obtain assistance in the implementation of this subchapter, in order to:

(1) Secure uniformity of regulations;

(2) Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs;

(3) Develop and administer state plans for licensing of certified applicators consistent with federal standards;

(4) Contract for training with other agencies for the purpose of training licensed applicators;

(5) Contract for monitoring pesticides for the national plan;

(6) Prepare and submit state plans to meet federal certification standards, as provided for in Section 4 of FIFRA; and

(7) Regulate certified applicators.

20-20-223. Reciprocal agreements.

The State Plant Board may waive all or part of the examination requirements provided for in §§ 20-20-209 -20-20-211 and 20-20-217 on a reciprocal basis with any other state which has substantially the same standards and so long as out-of-state applicators are made subject to enforcement procedures provided in this subchapter to the same extent as those applicators examined and certified in this state.

20-20-224. Information and instruction.

The State Plant Board may, in cooperation with the University of Arkansas or other educational institutions, publish information and conduct short courses of instruction in the areas of knowledge required by this subchapter or the regulations adopted pursuant to it.

20-20-225. Disposition of funds.

All moneys received by the State Plant Board under the provisions of this subchapter and the regulations adopted thereunder shall be deposited in the State Plant Board Fund of the State Treasury and be used for carrying out the provisions of this subchapter.

20-20-226. State preemption.

(a) Except as otherwise authorized in this subchapter, no city, county, or other political subdivision of the state shall adopt any ordinance, rule, or regulation regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides.

(b) This section shall not affect the validity of any ordinance, rule, or regulation regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides adopted prior to March 1, 1993.

20-20-227. Use inconsistent with pesticide labeling.

Any person who uses a pesticide in a manner inconsistent with its labeling is subject to the jurisdiction of the State Plant Board and its statutes, rules and order over which it has regulatory authority and may be subject to denial, suspension, revocation or modification of a license or permit under Section 20-20-214. Any person who knowingly uses a pesticide in a manner inconsistent with its labeling is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

Regulations Under Act 389 of 1975 as Amended

Regulation No. 1. Categories of Applicators

The following categories have been established for licensing and applicator certification purposes:

I. Commercial Applicator Categories
- A. Agricultural Pest Control
  - (1). Plants
    - 1. Agricultural Produce and Lands Pest Control
  - (2). Animals
- B. Forest Pest Control
  - (1). Wood Treatment
- C. Right-of-Way Pest Control
- D. Aquatic Pest Control
- E. Demonstration and Research Pest Control
- F. Public Health Pest Control
- G. Seed Treatment
- H. Regulatory Pest Control

II. Non-Commercial Applicator Categories Same as Commercial Applicator

Regulation No. 2. Commercial Applicator

I. All herbicide spray applications made by air to field crops (does not include forestry) shall be done in accordance with the following requirements unless otherwise required by the Plant Board:

(A) When applying a herbicide, an aircraft may not exceed 145 miles per hour. Higher airspeeds may be utilized if the operator can document that the setup combination and airspeed selected will allow compliance with the spray classification as identified in paragraph (1)(i) below. Such compliance must be verified by a person or entity that is independent of the applicator/firm, has specific education and training and experience in the application of herbicides to field crops, and whose curriculum vitae is acceptable to the Plant Board. Documentation of such verification must be recorded on a form provided by the Plant Board. Upon the effective date of these regulations, said documentation must be provided to the Plant Board by June 2, 2002. All subsequent verification documentation must be provided to the Plant Board prior to use of the setup.

(B) The spray boom height at the time of product release shall not exceed 15 feet above the crop canopy. Where obstructions in or adjacent to the field of application will not safely allow application at the 15 foot level, a higher elevation may be used in the vicinity of such obstructions. However, where the product label imposes more restrictive application elevations, those elevations must be complied with.

(C) Herbicide applications may not be made under conditions where the spray may possibly be entrained in an inversion layer. As an indicator that an inversion is unlikely to exist, the applicator shall record the ambient temperature measured at the airstrip from which he/she is working for each application. Inversions are much less likely to exist if the temperature has increased three (3) degrees Fahrenheit from the morning low at the time of application for applications made before noon or has not decreased more than three (3) degrees Fahrenheit from the afternoon high for applications made after noon. The applicator should also use other legal means available to him/her to verify that an inversion does not exist.

(D) All spray nozzle discharges must be pointed toward the rear of the aircraft and a minium of ten (10) inches below the trailing edge of the wing.

(E) The spray boom length divided by the wing span shall not be greater than 0.7 for fixed wing aircraft and 0.8 for rotary wing aircraft.

(F) The wind shear angle of the spray nozzle discharge may not exceed thirty (30) degrees. However, the spray classification category requirements of paragraph (1)(i) below must be met.

(G) Drift reduction nozzles such as Reglo Jet, CP drift reduction tips, narrow angle (65 degrees or less) flat fans, straight stream or other nozzle/configurations that are able to meet the spray classification category requirements set out in paragraph (1)(i) below must be used. Documentation verifying the latter's compliance must be made available to the Plant Board upon request.

(H) Application rate must be greater than two (2) gallons per acre, unless otherwise required by the label.

(I) Spray classification category must be in the Medium or larger category in accordance with the August 1999 issue of ASAE S572 report entitled Spray Nozzle Classification by Droplet Spectra.

(J) Where the product label is more restrictive than these regulations, the label must take precedence.

II All herbicide spray applications made by ground to field crops (does not include forestry) shall be done in accordance with the following requirements unless otherwise required by the Plant Board :

(A) Vehicle speed while making an application shall be as follows:

(a)	Medium Droplet Size	10 mph or less
(b)	Coarse Droplet Size	15 mph or less
(c)	Very Coarse Droplet Size	May be Greater Than 15 mph

The above spray classification categories are as defined in the August 1999 issue of ASAE S572 report entitled Spray Nozzle Classification by Droplet Spectra.

(B) Spray boom height shall not exceed 30 inches above the crop canopy with a medium droplet size but may go to 60 inches above the canopy with a coarse or larger droplet size. If the product label or other restrictions imposed by the Plant Board requires a lower level, then that elevation must be used.

(C) Herbicide applications may not be made under conditions where the spray may possibly be entrained in an inversion layer. As an indicator that an inversion is unlikely to exist, the applicator shall record the ambient temperature measured at the field of application for each application. Inversions are much less likely to exist if the temperature has increased three (3) degrees Fahrenheit from the morning low at the time of application for applications made before noon or has not decreased more than three (3) degrees Fahrenheit from the afternoon high for applications made after noon. The applicator should also use other legal means available to him/her to verify that an inversion does not exist.

(D) Applications are restricted to hydraulic style nozzles that initiate droplet movement in the direction of the plant canopy. Rotary or Control Droplet Application equipment that emits droplets in a horizontal fashion may be used only if the spray classification meets the medium or greater spray classification categories set out in the document referenced in paragraph (1)(i) above. Such compliance must be verified by a person or entity that is independent of the applicator/firm, has specific education and training and experience in the application of herbicides to field crops, and whose curriculum vitae is acceptable to the Plant Board. Upon the effective date of these regulations, said documentation must be provided to the Plant Board by June 2, 2002. All subsequent verification documentation must be provided to the Plant Board prior to use of the setup.

(E) The application rate must be a minimum of two (2) gallons per acre unless otherwise required by the label.

(F) Drift reduction nozzles that produce medium or greater spray classifications must be used .

(G) Where the product label is more restrictive than these regulations, the label must take precedence.

III All commercial pesticide applications made by ground must be done under the supervision (as defined in ACA 20-20-203(27) of a certified, licensed commercial applicator. The driver/operator of the vehicle must be either a certified, licensed commercial applicator licensed by the Plant Board or a licensed Commercial Applicator Technician licensed by the Plant Board.

(A) A Commercial Applicator Technician works under the supervision of a certified, commercial applicator.

(B) A Commercial Applicator Technician must be licensed by the Plant Board. Said license shall expire on December 31st of each year.

(C) To obtain a Commercial Applicator Technician (CAT) license the applicant must provide proof of completion of the CAT ground application training course established by the Plant Board within four (4) months of application and have paid the application review fee as specified by the Plant Board.

IV License application review fees shall be as follows:

(A)	License to apply seed, fertilizer, and pesticides	$100
	Plus for each aircraft or article of ground equipment	$20
(B)	Individual Commercial Applicator license, per category	$35
(C)	Seed treatment license	$100
	If restricted use pesticides used - additional	$35
(D)	Commercial Applicator Technician license	$25

A fee of $5 from each license issued to a CAT by the Plant Board shall be transferred to the University of Arkansas Cooperative Extension Service for the purpose of developing and providing CAT training subject to approval by the Plant Board.

V Financial Responsibility - Financial responsibility shall be established in one of the four following ways: (1) a letter of credit from an Arkansas Bank guaranteeing financial responsibility; (2) a surety bond; (3) an escrow account with an Arkansas Bank; or (4) an insurance policy or certification thereof. The minimum financial responsibility shall be $100,000. The deductible clause shall not exceed $5,000 for an insurance policy. Exemption: This requirement shall not apply to Seed Treatment Applicators and Regulatory Pest Control Applicators.

VI Decals - A decal shall be issued for each air craft or article of ground equipment upon approval of application. Such decal shall be attached to or displayed on the aircraft and/or article of ground equipment prior to its use under the license granted.

Regulation No. 3. Non-Commercial Applicator's License.

The review fee for a Non-Commercial Applicator's license shall be $35 per category. At the discretion of the ASPB Director this fee may be waived for Cooperative Extension employees actively involved in supporting the ASPB's regulatory programs.

Regulation No. 4. Private Applicator License.

I. **Initial Certification**

All first time applicants for a Private Applicator's license must have been "certified" within the 12 months prior to license application. Certification for a first time applicant can be obtained in one of two ways:

(A) Applicant may attend the Pesticide Applicator Training offered by the County Cooperative Extension Office each year.

(B) Applicant may take an examination given by the State Plant Board. Applicant must achieve a minimum score of 70% of total possible points.

This certification will be valid for one five-year license or five consecutive one-year licenses. In no case shall a certification make a person eligible for licensure in excess of five years.

II **Recertification**

All applicants for a subsequent five year Private Applicator license must have been "recertified" within the 12 months prior to license application. All applicants for a one year license must have been "recertified" within the 48 months prior to license application. Recertification can be obtained in one of two ways:

(A) Applicant may attend the Pesticide Applicator Training offered by the County Cooperative Extension Office each year.

(B) Applicant may take an examination given by the State Plant Board. Applicant must achieve a minium score of 70% of total possible points.

III One other option available for recertification is that the applicant may attend other approved training classes that address the certification requirements for private applicator certification cited in 40 CFR, Part 171.5. Each approved class will be assigned a point value by the Plant Board and at least five (5) points must be accumulated during the 36 months prior to license application. Course facilitators must provide the Plant Board with a list of all who attended the class that want the class points to be applied to private applicator recertification. The applicant will be required to fill out a course verification form for each class and submit it with their private applicator license application form.

Recertification will be valid for one five-year license or five consecutive one-year licenses. In no case shall recertification make a person eligible for licensure in excess of five years.

IV The fee for private applicator's license shall be as specified in the Arkansas Pesticide Use and Application Act of 1975, as amended.

V. The license will permit the certified applicator to purchase and use restricted use pesticides in any category under the amended FIFRA or state regulations on pesticide classification.

VI A fee of $2.00 from each license issued to a private applicator by the Plant Board for each year of the license period shall be transferred to the University of Arkansas Cooperative Extension Service for the purpose of developing and providing training for certification and recertification of private pesticide applicators in accordance with the requirements of 40CFR, Part 171.5.

VII The transfer of such funds shall be made quarterly by a cooperative agreement contract between the State Plant Board and the University of Arkansas Cooperative Extension Service.

VIII Private applicators using aircraft to apply herbicides must comply with the criteria set out for commercial applicators in Regulation 2, Paragraph 1 of these regulations

Regulation No. 5. Pilot License

Fee - $35.00

Regulation No. 6. Pesticide Dealer's License

Fee - $65.00 for dealers handling restricted use pesticides and state classified pesticides with the E or F designation. Note: If license-holding dealers have branches which sell or distribute restricted use or state classified pesticides with the E or F designation, each branch must have a dealer's license.

Regulation No.7. Container and Containment Regulations

In accordance with ACA 20-20-216, the Arkansas State Plant Board hereby adopts 40 CFR Part 165, Subparts A through E (see Attachment I).

The enactment of regulations under this Act is not intended nor shall they have the effect of repealing regulations promulgated under the authority of Acts 410 or 488 of 1975.

Quinclorac Use Restrictions

1. The buffer zones in the table below shall apply to Quinclorac herbicide applications:

Herbicide Treatment Options	Application Equipment	Buffer Zones	
		When winds are blowing in the direction of incorporated towns or commercial plantings of the solanaceae family.	When winds are NOT blowing in the direction of incorporated towns or commercial plantings[1] of the solanaceae family.
a. Water diluted spray of Quinclorac herbicide tank-mixed with emulsifiable concentrate (EC) formulation herbicides such as: ·Stam M-4 EC ·Arrosolo 3+3 EC ·Propanil EC ·Ordram 8E ·Abolish 8E ·Bolero EC	Aircraft Spray Wind Speed 3 to 8 mph	4 miles	1 mile
	Ground Spray Wind Speed 3 to 8 mph	1 mile	1/2 mile
b. Water diluted spray of Quinclorac herbicide applied in water alone or tank-mixed with emulsifiable concentrate formulation free herbicides such as: ·Stam 80EDF ·Basagran ·Terra Propanil 80DF ·Blazer ·Wham EZ, Super Wham ·Storm ·Pentagon 60 WDG ·Londax	Aircraft Spray Wind Speed 3 to 8 mph	1 mile	1 mile
	Ground Spray Wind Speed 3 to 8 mph	1/2 mile	1/2 mile

[1] Exemption: In areas where cities have annexed blocks of agricultural land, water diluted sprays of Quinclorac may be used within or adjacent to the city limits, provided the application site is no closer than 1/2 mile to subdivisions when using ground equipment or 1 mile to subdivisions when using aircraft and no closer than 1/4 mile to established plants of the solanaceae family or established/emerged cotton.

2. No water diluted spray of Quinclorac herbicide shall be applied closer than 1/4 mile by any means to established/emerged cotton, noncommercial plantings of the solanaceae family, or closer than 1/2 mile by aircraft if the wind is blowing in the direction of such plants.

3. No water diluted spray of Quinclorac herbicide shall be applied closer than 1 mile by aircraft or 1/2 mile by ground equipment to established, certified commercial plantings of the solanaceae family (>1,000 plants each kind) statewide.

4. In addition to the above statewide requirements, the following additional restrictions shall apply to Poinsett County.

   a. No water diluted spray of Quinclorac herbicide shall be applied in an area from one mile west of Highway #1 to one mile east of Highway #163 from the Craighead-Poinsett County line to the Cross-Poinsett County line.
   b. Water diluted spray of Quinclorac herbicide shall be applied only by ground equipment in the area of Poinsett County from one mile west of Highway #1 to two miles west of Highway #1 and only by ground equipment in the area of Poinsett County from one mile east of Highway #163 to Ditch #10, from the Craighead-Poinsett County line to the Cross-Poinsett County line.
   c. No water diluted spray of Quinclorac herbicide shall be applied within 1/2 mile with ground equipment or 1 mile by aircraft of commercial plantings of the solanaceae family and towns. This buffer is extended to one mile for ground application and two miles for aerial application when Quinclorac herbicide is mixed with emulsifiable concentrate formulation herbicides.

5. The buffer zones defined in paragraph one (1) (b) shall apply to tank mixes of water diluted sprays of Quinclorac and EC products for which the EC manufacturer has provided the Plant Board with atomization study data from a research entity acceptable to the Plant Board that shows that the product does not produce more "fines" (percent of total spray volume in droplets <105μm) than water.

6. All applications of Quinclorac shall be made in accordance with the applicable drift minimization recommendations of the Spray Drift Task Force.

7. Both air and ground application equipment shall be set up for application of Quinclorac in such a way that generation of spray droplets less than 105 microns in size is less than 5% of the total volume. The spray nozzle size classification must be designated as "coarse" by the British Crop Protection Council.

8. Quinclorac may not be sold to persons that do not possess a current Private, Commercial or Non-Commercial Applicator's License.

PART 165—PESTICIDE MANAGEMENT AND DISPOSAL

Subpart A—General

Sec.
165.1 Scope.
165.3 Definitions.
165.4-165.19 [Reserved]

Subpart B—Nonrefillable Container Standards: Container Design and Residue Removal

165.20 General provisions. 165.23 Scope of pesticide products included. 165.25 Nonrefillable container standards. 165.27 Reporting and reoordkeeping. 165.28-165.39 [Reserved]

Subpart C—Refillable Container Standards: Container Design

165.40 General provisions. 165.43 Scope of pesticide products included. 165.45 Refillable container standards. 165.47 What information must I report about my refillable containers?
165.48-165.59 [Reserved]

Subpart D—Standards for Repackaging Pesticide Products into Refillable Containers

165.60 General provisions.
165.63 Scope of pesticide products included.
165.65 Registrants who distribute or sell pesticide products in refillable containers.
165.67 Registrants who distribute or sell pesticide products to refillers for repackaging.
165.70 Refillers who are not registrants.
165.71-165.79 [Reserved]

Subpart E—Standards for Pesticide Containment Structures

165.80 General provisions.
165.81 Scope of stationary pesticide containers included.
165.82 Scope of pesticide dispensing areas included.
165.83 Definition of new and existing structures.
165.85 Design and capacity requirements for new structures.
165.87 Design and capacity requirements for existing structures.
165.90 Operational, inspection and- maintenance requirements for all new and existing containment structures.
165.92 What if I need both a containment pad and a secondary containment unit?
165.95 What recordkeeping do I have, to do as a facility owner or operator?
165.97 States with existing containment programs.

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

SOURCE: 71 PR 47422, Aug. 16, 2006, unless otherwise noted.

Subpart A—General

§ 165.1 Scope.

The Part 165 regulations establish standards and requirements for pesticide containers, repackaging pesticides, and pesticide containment structures.

§ 165.3 Definitions.

Act means the Federal Insecticide, Fungicide, and Rodenticide Act.

Agricultural pesticide means any pesticide product labeled for use in a nursery or greenhouse or for use in the production of any agricultural commodity, including any plant, plant part, animal, or animal product produced by persons (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturalists, horticulturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

Appurtenance means any equipment or device which is used for the purpose of transferring a pesticide from a stationary pesticide container or to any refillable container, including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering devices.

Container means any package, can, bottle, bag, barrel, drum, tank, or other containing-device (excluding any application tanks) used to enclose a pesticide. Containers that are used to sell or distribute a pesticide product and that also function in applying the product (such as spray bottles, aerosol cans and containers that become part of a direct injection system) are considered to be containers for the purposes of this part.

Containment pad means any structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area.

Containment structure means either a secondary containment unit or a containment pad.

Custom blending means the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when:

(1) The blend is prepared to the order of the customer and is not held in inventory by the blender;

(2) The blend is to be used on the customer's property (including leased or rented property);

(3) The pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend;

(4) The blend is prepared from registered pesticides; and

(5) The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.

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

Establishment means any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person).

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

Nonrefillable container means a container that is not a refillable container and that is designed and constructed for one time containment of a pesticide for sale or distribution. Reconditioned containers are considered to be nonrefillable containers.

One-way valve means a valve that is designed and constructed to allow virtually unrestricted flow in one direction and no flow in the opposite direction, thus allowing the withdrawal of material from, but not the introduction of material into, a container.

Operator means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located.

Owner means any person who owns a facility at which a containment structure is required.

Pesticide compatible means, as applied to containers, 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:

(1) Is corrosive to the container;

(2) Causes softening, premature aging, or embrittlement of the container;

(3) Otherwise causes the container to weaken or to create the risk of discharge;

(4) Reacts in a significant chemical, electrolytic, or galvanic manner with the container, or

(5) Interacts in a way, such as the active ingredient permeating the container wall, that would cause the formulation to differ from its composition as described in the statement required in connection with its registration under FIFRA section 3.

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

Pesticide dispensing area means an area in which pesticide is transferred out of or into a container.

Portable pesticide container means a refillable container that is not a stationary pesticide container.

Pressure rinse means the flushing of the container to remove pesticide residue by using a pressure method with a pressure of at least 40 PSI.

Produce means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

Producer means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling),

Refillable container means a container that is intended to be filled with pesticide more than once for sale or distribution.

Refiller means a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.

Refilling establishment means an establishment where the activity of repackaging pesticide product into refillable containers occurs.

Repackage means, for the purposes of this part, to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's BPA registration number, for sale or distribution.

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

Runoff means surface water leaving the target site.

Secondary containment unit means any structure, including rigid diking, that is designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff and leaching from stationary pesticide containers.

Stationary pesticide container means a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

Tamper-evident device means a device which can be visually inspected to determine if a container has been opened.

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.

Triple rinse means the flushing of the container three times to remove pesticide residue by using a non-pressurized method.

Washwater means 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.

§§ 165.4-165.19 [Reserved]

Subpart B—Nonreducible Container Standards: Container Design and Residue Removal

§ 165.20 General provisions.

(a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish design and construction requirements for nonrefill-able containers used for the distribution or sale of some pesticide products.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in nonrefillable containers. If your pesticide product is subject to the regulations in this subpart as set out in §165.23, your pesticide product must be distributed or sold in a nonrefillable container that meets the standards of these regulations.

(c) *When do I have to comply?* As of August 17, 2009, all pesticide products distributed or sold by you in nonrefillable containers must be distributed or sold in compliance with these regulations.

§ 165.23 Scope of pesticide products included.

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to manufacturing use products, as defined in §158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in §174.3 of this chapter.

(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:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (d) of this section.

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

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the nonrefillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this sub-part. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the nonrefillable container regulations within the time frames established by EPA in the rule or in its notification.

(e) *What other pesticide products are subject to the regulations in this subpartt* (1) Except for manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt under paragraph (c) of this section, all of the regulations in this sub-part 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 sec tion, and other pesticide products that are regulated under paragraph (e)(l) of this section, a pesticide product must be packaged in compliance with 49 CPR 173.24. If the pesticide product meets the definition of a hazardous material in 49 CFE 171.8, the Department of Transportation requires it to be pack aged 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.

§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 is designed, constructed, and marked to comply with the requirements of 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(0), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material.

(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.

(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 is designed, constructed, and marked to<v~-comply with the requirements of 49 CFR parts 171-180.

(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 threads per inch, National Pipe Straight (NFS) 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 flowable 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)(l) 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:

percent removal = [1.0 - BB] x 100.0, where

RR = rlnsate 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.

(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.

§ 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 - 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 BPA or any entity designated by BPA, 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.

(ill) A copy of EPA's approval of any non-standard closure.

(4) At least one of the following records pertaining to the container dispensing capability requirements in §165.25(e) for each nonrefillable container used to distribute or sell the pesticide product that must comply with §165.25(6):

(i) Test data or documentation demonstrating that the nonrefillable container meets the standards in § 165.25(e) when it contains the pesticide product.

(ii) Test data or documentation demonstrating that a different nonrefillable container meets the standards in §165.25(e) when it contains the pesticide product or even a different pesticide product and a written explanation of why such data or documentation demonstrates that the container meets the standards in §165.25(e) for the pesticide product.

(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 flowable concentrate or if EPA specifically requests the records on a case by case basis:

(i) Test data showing that the nonrefillable container and pesticide formulation meet the standard in §165.25(f).

(ii) Test data showing that a different nonrefillable container with the same or a different pesticide formulation meets the standard in § 165.25(f), together with a written explanation of why such data demonstrate that the nonrefillable container and pesticide formulation meet the standard in §165.25(f).

§§ 165.28-165.39 [Reserved]

Subpart C—Refillable Container Standards: Container Design

§ 165.40 General provisions.

(a) *What is the purpose of the regulations in this subpartf* The regulations in this subpart establish design and construction requirements for refillable containers used for the distribution or sale of some pesticide products.

(b) *Do I have to comply with the regulations in this subpart"?* (1) You must comply with all of the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers. If your pesticide product is subject to the regulations in this subpart as set out in §165.43, your pesticide product must be distributed or sold in a refillable container that meets the standards of these regulations. This includes your pesticide products that are repackaged according to subpart D of this part.

(2) You must comply with the regulations in §165.45(f) for stationary pesticide containers if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. If the pesticide product is subject to the regulations in this subpart as set out in §165.43, the stationary pesticide containers used to distribute or sell the product must meet the standards of §165.45(f).

(c) *When do I have to comply?* As of August 16, 2011, all pesticide products distributed or sold by you in refillable containers must be distributed or sold in compliance with these regulations.

§ 165.43 Scope of pesticide products included.

(&) Are manufacturing use products subject to the regulations in this subpartt No, the regulations in this subpart do

not apply to manufacturing use products, as defined in §158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart!* No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

(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:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (e) of this section.

(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:

(1) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(2) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

(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:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines 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, EPA may require, by rule, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the refillable container regulations within the time frames established by EPA in the rule or in its notification.

(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 by paragraph (d) of this section are subject to the regulations indicated in that section.

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

(h) *Are there any other exceptions'?* (1) The regulations in this subpart do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) The regulations in this subpart do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

§ 165.45 Refillable container standards.

(a) *What Department of Transportation (DOT) standards do my refillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?* (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 is designed, constructed, and marked to comply with the requirements of 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(0), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material.

(2) A refiller is not required to comply with 49 CFR 173.28(b)(2) for pesticide products that are not DOT hazardous materials if the refillable container to be reused complies with the refillable container regulations in this subpart and the refilling is done in compliance with the repackaging regulations in subpart D of this part.

(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.

(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 is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180.

(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 marking do my refillable containers have to meet"!* Bach refillable container must be marked in a durable and clearly visible manner with a serial number or other identifying code that will distinguish the individual container from all other containers. Durable marking includes, but is not limited to, etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, and marking with durable ink. The serial number or other identifying code must be located on the outside part of the container except on a closure. Placement on the label or labeling is not sufficient unless the label is an integral, permanent part of or permanently stamped on the container.

(e) *What standards for openings do my refillable containers have to meetl* 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, 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 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:

(1) Except during a civil emergency or any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, each stationary pesticide container (for liquid and dry pesticides) and its appurtenances must meet both of the following standards:

(i) Bach stationary pesticide container and its appurtenances must be resistant to extreme changes in temperature and constructed of materials that are adequately thick to not fail and that are resistant to corrosion, puncture, or cracking.

(ii) Bach stationary pesticide container must be capable of withstanding all operating stresses, taking into account static heat, pressure buildup from pumps and compressors, and any other foreseeable mechanical stresses to which the container may be subjected in the course of operations.

(2) Bach stationary liquid pesticide container must meet all of the following standards:

(i) Each stationary liquid pesticide container 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 liquid pesticide containers.

(iii) Bach stationary liquid pesticide container connection 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 B of this part.

(g) *Can I obtain a waiver from or a modification to any of the refillable container standards'?* Yes, it is possible for you to obtain a waiver from or a modification to some of the refillable 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.

(h) *How do I obtain a waiver from or a modification to any of the refutable container standards?* To obtain a waiver from or a modification to any of the refillable 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 refillable container that does not comply with all of the refillable 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 refillable 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.

§165.47 What information must I report about my refillable containers?

You are not required to report to EPA with information about your refillable 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 FIFBA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

§§ 165.48-165.59 [Reserved]

Subpart D—Standards for Repackaging Pesticide Products into Refillable Containers

§ 165.60 General provisions.

(a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish requirements for repackaging some pesticide products into refillable containers for distribution or sale.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers, if you are a registrant who distributes or sells pesticide products to a refiller (that is not part of your company) for repackaging into refillable containers, or if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. Each pesticide product that is subject to the regulations in this subpart as set out in § 165.63 and that is distributed or sold in a refillable container must be distributed or sold in compliance with the standards of these regulations.

(c) *When do I have to comply?* As of August 16, 2011, all pesticide products distributed or sold by you in refillable containers must be distributed or sold in compliance with these regulations.

§ 165.63 Scope of pesticide products included.

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to manufacturing use products, as defined in §158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpartt* No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

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

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (e) of this section.

(d) *Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations?* (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)	§165.700)(2)
Container inspection: criteria regarding a serial number or other identifying code	§165.65(e)(3)	§165.70(0(3)
Container inspection: criteria regarding one-way valve or tamper-evident device	§165.65(e)(4)	§165.70(0(4)
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)

(2) For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

(i) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(ii) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

(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 repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be repackaged in compliance with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be repackaged in compliance with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the repackaging regulations within the time frames established by EPA in the rule or in its notification.

(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 paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in that section.

(g) *What does "pesticide product" or "pesticide" mean in the rest of this subpart?* In §§165.63(h) through 165.70, 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.

(h) *Are there any other exceptions'?* (1) The regulations in this subpart do not apply to transport vehicles that eon-tain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) Custom blending is not subject to the regulations in this subpart.

(3) The regulations in this subpart do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

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

(a) *Must I comply with the standards in this section?* You must comply with the standards in this section if you are a registrant who distributes or sells pesticide products in refillable containers. This means that you conduct all of the repackaging for a pesticide product and that you do not distribute or sell the pesticide product to a refiller that is not part of your company for repackaging into refillable containers. If you are a registrant that repackages a product directly into refillable containers for sale or distribution and you also sell or distribute other quantities of that product to an independent re-filler for repackaging, then you must meet the requirements in this section for those quantities you distribute or sell directly and the requirements in §165.67 for those quantities that you distribute or sell to an independent refiller.

(b) *Am I responsible for product integrity?* Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the

composition described in its confidential statement of formula that is required under FIFRA section 3.

(c) *What information must I develop!* For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under "Directions for Use," or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(d) *What requirements must my individual establishments follow regarding repackaging a pesticide product into refillable containers'?* A refiller at your individual establishment that repackages a pesticide product into refillable containers for distribution or sale must comply with all of the following provisions.

(1) The establishment must be registered with BPA as a producing establishment as required by §167.20 of this chapter.

(2) The refiller must not change the pesticide formulation unless the refiller has a registration for the new formulation.

(3) The refiller must repackage a pesticide product only into a refillable container that is identified on your description of acceptable containers for that pesticide product.

(4) The refiller may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that the refiller can use.

(5) The refiller must have all of the following items at the establishment before repackaging a pesticide product into any refillable container for distribution or sale:

(i) The pesticide product's label and labeling.

(ii) The written refilling residue removal procedure for the pesticide product.

(iii) The written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, the refiller must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (f) of this section. The refiller may identify the previous pesticide product by referring to the label or labeling.

(7) The refiller must inspect each refillable container according to paragraph (e) of this section.

(8) The refiller must clean each refillable container according to paragraph (f) or (g) of this section, if required by either paragraph.

(9) The refiller must ensure that each refillable container is properly labeled according to paragraph (h) of this section.

(10) The establishment must maintain records in accordance with paragraph (i) of this section.

(11) The establishment must maintain records as required by part 169 of this chapter.

(12) The establishment must report as required by part 167 of this chapter.

(e) *How must my individual establishments inspect refillable containers'!* Before repackaging a pesticide product into any refillable container, a refiller at your establishment must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in paragraph (e)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (e)(2) or (e)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in sub-part C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by §165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(f) *How must my individual establishments clean refillable containers?* A refiller at your establishment must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (f)(1) of this section and either paragraph (f)(2) or (f)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied:

(i) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFBA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(g) *How must my individual establishments clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve"?* As required in paragraph (f) of this section, a refiller at your establishment must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(h) *How must my individual establishments label refillable containers'!* Before distributing or selling a pesticide product in a refillable container, a refiller at your establishment must ensure that the label of the pesticide product is securely attached to the refillable

container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, the refiller at your establishment must ensure that the net contents statement and EPA establishment number appear on the label.

(i) *What recordkeeping must my individual establishments do?* Bach of your individual establishments that repackages a pesticide product into refillable containers for distribution or sale must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. The establishment 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.

(ij For each pesticide product distributed or sold in refillable containers, both of the following records must be maintained for the current operating year and for 3 years after that:

(i) The written refilling residue removal procedure for the pesticide product.

(ii) The written description of acceptable containers for the pesticide product.

(2) Each time a refiller at your establishment repackages a pesticide product into a refillable container and distributes or sells the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:

(i) The EPA registration number of the pesticide product distributed or sold in the refillable container.

(ii) The date of the repackaging.

(iii) The serial number of the refillable container.

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

(a) *Must I comply with the standards in this section?* You must comply with the standards in this section if you are a registrant who distributes or sells pesticide products to a refiller that is not part of your company for repackaging into refillable containers.

(b) *Under what conditions can I allow a refiller to repackage my pesticide product into refillable containers?* You may allow a refiller to repackage your pesticide product into refillable containers and to distribute or sell such repackaged product under your existing registration if all of the following conditions are satisfied:

(1) The repackaging results in no change to the pesticide formulation.

(2) One of the following conditions regarding a registered refilling establishment is satisfied:

(i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.

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

(3) You have entered into a written contract with the refiller to repackage the pesticide product and to use the label of your pesticide product.

(4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.

(5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

(c) *What violations are applicable to illegal repackaging?* Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the refiller that is repackaging your pesticide product under written contract with you may be liable for violations pertaining to the repackaged 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 to the refiller before you distribute or sell the pesticide product to the refiller.

(e) *Am I responsible for product integrity!* Yes, for a product that you distribute or sell to a refiller that is not part of your company for repackaging into refillable containers, you are responsible for the pesticide product not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFEA section 3.

(f) *What information must I develop?* For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under "Directions for Use," or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(g) *When must I provide the information to the refiller"* You must provide the refiller with all of the following information and documentation before or at the time of distribution or sale of your pesticide product to the refiller:

(1) Your written refilling residue removal procedure for the pesticide product.

(2) Your written description of acceptable containers for the pesticide product.

(3) The pesticide product's label and labeling.

(h) *What recordkeeping must I* do? You must maintain all of the records listed in this section for the current operating year 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:

(1) Each written contract entered into with a refiller for repackaging your pesticide product into refillable containers.

(2) Your written refilling residue removal procedure for the pesticide product.

(3) Your written description of acceptable containers for the pesticide product.

§165.70 Refillers who are not registrants.

(a) *Must I comply with the standards in this section"?* You must comply with the standards in this section if you are a refiller of a pesticide product and you are not the registrant of the pesticide product.

(b) *Under what conditions can I repackage a, registrant's pesticide product into refillable containers'?* A registrant may allow you to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all of the following conditions are satisfied:

(1) The repackaging results in no change to the pesticide formulation.

(2) One of the following conditions regarding a registered refilling establishment is satisfied:

(i) The pesticide product is repackaged at a refilling establishment registered with BPA as required by § 167.20 of this chapter.

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

(3) The registrant has entered into a written contract with you to repackage the pesticide product and to use the label of the registrant's pesticide product.

(4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.

(5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refillers EPA establishment number.

(c) *What violations are applicable to illegal repackaging?* Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the pesticide product's registrant may be liable for violations pertaining to the repackaged product.

(d) *Am I responsible for product integrity?* Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(e) *What requirements must I follow regarding repackaging a pesticide product into refillable containers?* You must comply with all of the following provisions.

(1) Your establishment must be registered with EPA as a producing establishment as required by §167.20 of this chapter.

(2) You must not change the pesticide formulation unless you have a registration for the new formulation.

(3) You must repackage a pesticide product only into a refillable container that is identified on the description of acceptable containers for that pesticide product provided by the registrant.

(4) You may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that you can use.

(5) You must have all of the following items at your establishment before repackaging a pesticide product into any refillable container for distribution or sale:

(i) The written contract from the pesticide product's registrant.

(ii) The pesticide product's label and labeling.

(iii) The registrant's written refilling residue removal procedure for the pesticide product.

(iv) The registrant's written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, you must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (g) of this section. You may identify the previous pesticide product by referring to the label or labeling.

(7) You must inspect each refillable container according to paragraph (f) of this section.

(8) You must clean each refillable container according to paragraph (g) or (h) of this section, if required by either paragraph.

(9) You must ensure that each refillable container is properly labeled according to paragraph (i) of this section.

(10) You must maintain records in accordance with paragraph (j) of this section.

(11) You must maintain records as required by part 169 of this chapter.

(12) You must report as required by part 167 of this chapter.

(13) The stationary pesticide containers at your establishment must meet the standards in §165.45(f).

(14) You may be required to comply with the containment standards in subpart E of this part.

(f) *How must I inspect refillable containers?* Before repackaging a pesticide product into any refillable container, you must visually inspect the exterior

and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in paragraph (f)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (f)(2) or (f)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in subpart C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by §165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(g) *How must I clean refillable containers'!* You must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (g)(1) of this section and either paragraph (g)(2) or (g)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied.

(i) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(h) *How must I clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve"?* As required in paragraph (g) of this section, you must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(i) *How must I label refillable containers!* Before distributing or selling a pesticide product in a refillable container, you must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, you must ensure that the net contents statement and SPA establishment number appear on the label.

(j) *What recordkeeping must I* do? You must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. You must furnish

these records for inspection and copying upon request by an employee of BPA or any entity designated by SPA, such as a State, another political subdivision or a Tribe.

(1) For each pesticide product distributed or sold in refillable containers, all of the following records must be maintained for the current operating year and for 3 years after that:

(i) The written contract from the pesticide product's registrant for the pesticide product.

(ii) The written refilling residue removal procedure for the pesticide product.

(ill) The written description of acceptable containers for the pesticide product.

(2) Bach time you repackage a pesticide product into a refillable container and distribute or sell the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:

(i) The BPA registration number of the pesticide product distributed or sold in the refillable container.

(ii) The date of the repackaging.

(iii) The serial number of the refillable container.

§§ 165.71-165.79 [Reserved]

Subpart E—Standards for Pesticide Containment Structures

§ 165.80 General provisions.

(a) *What is the purpose of the regulations in this subpart?* The purpose of the containment regulations in this sub-part is to protect human health and the environment from exposure to agricultural pesticides which may spill or leak from stationary pesticide containers. This protection is achieved by the construction of secondary containment units or pads at certain facilities handling agricultural pesticides. These regulations will also reduce waste generation associated with:

(1) Storage and handling of large quantities of pesticide products.

(2) Pesticide dispensing and container-refilling operations.

(b) *Do I have to comply with the regulations in this subpart'!* You must comply with the regulations in this subpart if you are an owner or operator of one of the following businesses and if you also have a stationary pesticide container or a pesticide dispensing (including container refilling) area:

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

(2) Custom blenders of agricultural pesticides.

(3) Businesses which apply an agricultural pesticide for compensation (other than trading of personal services between agricultural producers).

(c) *When do I have to comply"?* You must comply with all applicable containment regulations for new and existing structures as of August 17, 2009.

§ 165.81 Scope of stationary pesticide containers included.

(a) *What is a stationary pesticide container"* A stationary pesticide container is a refillable container that is fixed at a single facility or establishment, or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

(b) *What stationary pesticide containers are subject to the regulations in this subpart"!* Stationary pesticide containers designed to hold undivided quantities of agricultural 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 are subject to the regulations in this subpart and must have a secondary containment unit that complies with the provisions of this sub-part unless any of the following conditions exists:

(1) The container is empty, that is, all pesticide that can be removed by methods such as draining, pumping or aspirating has been removed (whether or not the container has been rinsed or washed).

(2) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.

(3) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.

(4) The container is dedicated to non-pesticide use, and is labeled accordingly.

§165.82 Scope of pesticide dispensing areas included.

(a) *What pesticide dispensing areas are subject to the regulations in this subpart?* A pesticide dispensing area is subject to the containment regulations in this subpart and must have a containment pad that complies with the requirements of this subpart if any of the following activities occur:

(1) Refillable containers of agricultural pesticide are emptied, cleaned or rinsed.

(2) Agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural 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 for any purpose, including refilling or emptying for cleaning. This applies when pesticide is dispensed from the container into any vessel, including, but not limited to:

(i) Befillable containers;

(ii) Service containers;

(iii) Transport vehicles;

(iv) Application equipment.

(3) Agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

(4) Agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container for sale or distribution. Containment requirements do not apply if the agricultural pesticide is dispensed from such a container for use, application or purposes other than refilling for sale or distribution.

(b) *What pesticide dispensing areas are exempt from the regulations in this subpart"!* A pesticide dispensing area is exempt from the regulations in this subpart if any of the following conditions exist:

(1) The only pesticides in the dispensing area would be gaseous when released at atmospheric temperature and pressure.

(2) The only pesticide containers refilled or emptied within the dispensing area are stationary pesticide containers which are already protected by a secondary containment unit that complies with the provisions of this subpart.

(3) The pesticide dispensing area is used solely for dispensing pesticide from a rail car which does not remain at a facility long enough to meet the definition of a stationary pesticide container; that is, 30 days.

§ 165.83 Definition of new and existing structures.

(a) *What is a new containment structure'?* A new containment structure is one whose installation began after November 16, 2006. Installation is considered to have begun if:

(1) You, as the owner or operator, have obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the containment structure; AND

(2) You have either begun a continuous on-site physical construction or installation program OR you have entered into contractual obligations. The contract must be such that it cannot be canceled or modified without substantial loss, and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

(b) *What is an existing containment structure"?* An existing containment structure is defined as one whose installation began on or before November 16, 2006.

§ 165.85 Design and capacity requirements for new structures.

(a) *For all new containment structures, what construction materials must I use?* These are the material specifications for a new containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(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 materials and still provide secondary containment of those same or other materials within the containment area. r (b) *For all new containment structures, what are the general design requirements'?* These are the general design requirements for new containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Appurtenances, discharge outlets or gravity drains must not be configured through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart. Appurtenances must be configured in such a way that spills or leaks are easy to see.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) *For new stationary liquid pesticide containment and new containment jpads in pesticide dispensing areas, what are ffie~ capacity requirements'!* These are the capacity requirements:

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

(3) New containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(4) New containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

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

(e) *For new containment pads in pesticide dispensing areas, what are the specific design requirements?* Each new containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(4) Have its surface sloped toward an area where liquids can be collected for

removal, such as a liquid-tight sump or a depression, in the case of a single-pour concrete pad.

(f) *For new stationary dry pesticide containment, what are the specific design requirements'!* These are the specific design requirements for new stationary dry pesticide containment:

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

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

(3) The stationary dry pesticide container storage area must be enclosed by a minimum of a 6-inch high curb that extends at least 2 feet beyond the perimeter of the container.

§165.87 Design and capacity requirements for existing structures.

(a) *For all existing containment structures, what construction materials must I use?* These are the material specifications for an existing containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(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 materials and still provide secondary containment of those same or other materials within the containment area.

(b) *For all existing containment structures, what are the general design requirements".* These are the general design requirements for existing containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) You must seal all appurtenances, discharge outlets and gravity drains through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) *For existing stationary liquid pesticide containment 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 liquid pesticide containers 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) Existing containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(3) Existing containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

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

(e) *For existing containment pads in pesticide dispensing areas, what are the specific design requirements?* Each existing containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(f) *For existing stationary dry pesticide containment, what are the specific design requirements?* These are the specific design requirements for existing stationary dry pesticide containment:

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

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

(3) The stationary dry pesticide container storage area must be enclosed by a minimum of a 6-inch high curb that extends at least 2 feet beyond the perimeter of the container.

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

(a) *What are the operating procedures required for all new and existing containment structures?* As the owner or operator of a new or existing pesticide containment structure, you must:

(1) Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure.)

(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 ground water) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of each day on which pesticides have been spilled or leaked.

(3) Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable Federal, State and local laws and regulations.

(4) Ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.

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

(b) *What are the inspection and maintenance requirements for all new and existing containment structures?* As owner or operator of a new or existing pesticide containment structure, you must:

(1) Inspect each stationary pesticide container and its appurtenances 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) Immediately repair 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.

(3) Not store any pesticide on a containment structure if the structure fails to meet the requirements of this

subpart until suitable repairs have been made. Prompt removal of pesticides, including emptying of stationary pesticide containers, in order to effect repairs or recovery of spilled material is acceptable.

§ 165.92 What if I need both a containment pad and a secondary containment unit?

You may combine containment pads and secondary containment units as an integrated system provided the requirements set out in this subpart for containment pads and secondary containment units in §§165.85(a) and (b), 165.87(a) and (b) and § 165.90, and as applicable, §§165.85(c)-(f) and 165.87(c)-(f) are satisfied separately.

§ 165.95 What recordkeeping do I have to do as a facility owner or operator?

As a facility owner or operator subject to the requirements of this sub-part, you must maintain the following records, and 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:

(a) Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for 3 years and must include the following information:

(1) Name of the person conducting the inspection or maintenance;

(2) Date the inspection or maintenance was conducted;

(3) Conditions noted;

(4) Specific maintenance performed.

(b) Records for any non-stationary pesticide container designed to hold undivided quantities of agricultural 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 that holds pesticide but is not protected by a secondary containment unit meeting these regulations must be kept for 3 years. Records on these non-stationary pesticide containers must include the time period that the container remains at the same location.

(c) Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for 3 years afterwards.

§165.97 States with existing containment programs.

(a) *What options are available to States that already have containment regulations'!* States that have promulgated containment regulations effective prior to August 16, 2006, and which also have primary enforcement responsibility and/or certification programs, have the option of continuing to implement their own programs in lieu of these Federal regulations.

(b) *How may a State request authority to continue implementing its State containment regulations'!* A State with pesticide containment regulations may request the authority to continue implementing State containment regulations by August 16, 2007 in the following manner:

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

(2) The State must identify any significant changes to State regulations which would be necessary in order to provide environmental protection equivalent to the EPA regulations, and develop an estimated timetable to effect these changes. The letter must be signed by the designated State Lead Agency.

(c) *How will EPA notify the State if its request is granted"!* EPA's Office of Pesticide Programs will review the State's correspondence and determine whether the State program is adequate to provide environmental protection equivalent to or more protective than these Federal regulations for new and existing containment structures. EPA's Office of Pesticide Programs will inform the State of its determination through a letter authorizing or declining to authorize the State to continue implementing its containment regulations and will detail any reasons for declining authorization.

(d) *How must a State inform EPA of revisions to its containment regulations'!* Any state that has received authorization to continue implementing its state containment regulations must inform EPA by letter signed by the designated State Lead Agency within 6 months of any revision to the State's containment regulations. EPA will inform the state by letter if it determines that the State's containment regulations are no longer adequate based on the revisions. The State's containment regulations will remain in effect, unless and until EPA sends the state a letter making this determination.