

(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 EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe. You must keep the following records:

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

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

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

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

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

(iii) 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(e):

(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 non-refillable 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 subpart?* 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.

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do