

U.S. EPA Update on the Pesticide Container Regulations

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MACA Mini-Bulk Summit – Part 2

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Agenda

- **Container & Containment Rule**
 - Quick Review of Requirements with August 2011 Compliance Date
 - Frequently Asked Questions
- **Questions**

Container-Containment Rule Overview

Category	Nonrefillable Containers	Refillable Containers	Repackaging Products	Container Labeling	Containment Structures
Who must comply?	Registrants	Registrants	Registrants Refillers	Registrants Users	Ag retailers Ag commercial applicators Ag custom blenders
Major Requirements	<ul style="list-style-type: none"> - DOT container design, construction & marking standards - Dispensing capability - Standard closures - Residue removal (99.99% removal) 	<ul style="list-style-type: none"> - DOT container design, construction & marking standards - One-way valves or tamper-evident devices - Vent, gauge & shutoff valve standards for large tanks 	<ul style="list-style-type: none"> - Registrants & refillers comply with specified conditions - Registrants develop & provide certain information - Refillers obtain & follow information; and clean, inspect & label containers before refilling them 	<ul style="list-style-type: none"> - Identify container as nonrefillable or refillable (<i>all</i>) - Statement to prohibit reuse and offer for recycling; batch code (<i>all nonrefillables</i>) - Cleaning instructions (<i>some nonrefillables</i>) - Cleaning instructions before disposal (<i>all refillables</i>) 	<ul style="list-style-type: none"> - Secondary containment structures (dikes) around large tanks - Containment pads for pesticide dispensing areas - Good operating procedures - Monthly inspections of tanks & structures
Compliance Date	Aug 17, 2009	Aug 17, 2011	Aug 17, 2011	Aug 17, 2011	Aug 17, 2009

Label Requirements

- New info is required on labels of pesticides released for shipment after August 16, 2011
- Required on both nonrefillable containers and refillable containers
- New container-related instructions include:
 - Identify as nonrefillable or refillable
 - Prohibit or limit reuse and refill
 - Recycling or reconditioning (nonrefillables only)
 - Cleaning instructions

Refillable Containers & Repackaging

If a refiller repackages pesticides under contract/agreement with a registrant, the refiller must comply with the following requirements when repackaging a pesticide (& releasing it for shipment) after **August 16, 2011**:

1. Standards for **stationary bulk tanks**;
2. Standards for **portable refillable containers** (i.e., minibulks, IBCs); and
3. Operational and recordkeeping requirements regarding **repackaging**.

Standards for Stationary Tanks

Stationary tanks (capacity of 500 gallons or more & at the facility of a refiller operating under contract with a registrant) must:

- Be durably marked with a serial number/identifying code;
- Meet integrity/strength standards;
- Have a vent;
- Have a shut-off valve on any connection below the normal liquid level; and
- Not have an external sight gauge.

[\$165.45(d) & (f)]



Portable Refillable Containers

The refiller must repackage into portable refillable containers that:

- Comply with the adopted DOT standards (Packing Group III);
- Are durably marked with a serial number/identifying code;
- Have a tamper-evident device or one-way valve or both on each opening other than a vent; and
- Are on the registrant's description of acceptable containers.

[§165.45(a)-(e); §165.70(e)(3)]



Repackaging Requirements

- Conditions for repackaging under a registrant's existing registration **[§165.70(b)]**
- Registrants develop and provide certain information to each refiller: **[§165.67(d), (f) & (g)]**
 - Written contract
 - Refilling residue removal procedure
 - Description of acceptable containers
- Requirements for independent (non-registrant) refillers **[§165.70(e)]**



Key New Requirements for Refillers

- Repackage only into compliant refillable containers. For portable containers, this means the container:
 - Is DOT compliant;
 - Is marked with a serial number/identifying code;
 - Has tamper-evident devices and/or one-way valves; and
 - Is on the registrant's description of acceptable containers.
- Clean container between uses unless all tamper-evident devices & one-way valves are intact and you are refilling with the same or a very similar product.
- Get the cleaning procedure & description of acceptable containers from the registrant for each product.
- For each refill, record the date, serial number/code of container; and pesticide.

Frequently Asked Questions

- Compliance date
- Which containers are covered?
- DOT requirements
- Rinsate management
- Other

FAQs: August 16, 2011 Deadline

- **Question 1: Has EPA changed the compliance date for the refillable container and repackaging regulations?**
- **Answer: No.**
 - Last year, we extended the deadline for the label requirements from Aug 16, 2010 to Aug 16, 2011.
 - However, the deadline for the refillable container & repackaging regs has always been August 16, 2011 and we have no plans to change it.
 - No moratorium against enforcement; OECA has not issued a “no action assurance”.

FAQs: August 16, 2011 Deadline

- **Question 2: If I fill a minibulk container on August 1, 2011, does it have to comply with the regulations?**
- **Answer: It depends.** The regs apply to pesticides that are released for shipment after 8/16/11. “Released for shipment” basically means the producer has packaged & labeled the pesticide in the manner in which it will be distributed or sold.
- **On 8/1/11**, you fill a minibulk, label it, close it and it is in the condition you will ship it. The container & label do not have to comply with the new regs. (Good to document the date.)
- **On 8/17/11**, you fill, label and close a minibulk. This must be done in compliance with the refillable container & repackaging regs and the label must have the new statements.

FAQs: August 16, 2011 Deadline

- **Question 3: Is it a problem if I have old, non-compliant minibulk containers in my storage area after 8/16/11?**
- **Answer: They are a temptation, not a violation!**
 - It is not illegal to have old, non-compliant containers sitting in your storage area.
 - It is only a violation if you fill those containers and use them to sell or distribute a pesticide after 8/16/11.

4. What is the difference between nonrefillable & refillable containers?

- **Nonrefillable container:** designed & constructed for one-time use and not intended to be filled again with a pesticide for sale or distribution.
- **Refillable container:** intended to be filled with pesticide more than once for sale or distribution.

[§165.3.]



A nonrefillable container will have a label that says: “Nonrefillable container. Do not reuse or refill this container.” **These containers cannot legally be reused or refilled!**

FAQs: Which containers?

- **Question 5: If a farmer owns a minibulk, does it have to comply?**
- **Answer: Yes.** It doesn't matter who owns the tank. If the minibulk is being used to sell or distribute a pesticide, it must comply with all relevant requirements.



FAQs: Which containers?

- **Question 6: If a registrant fills a minibulk, does it have to have a serial number/identifying code?**
- **Answer**: Yes, portable refillable containers filled by a registrant must have a serial number or other code durably marked on them.
- §165.40(b): You must comply with the refillable container regulations if you are a registrant who distributes or sells pesticide in refillable containers.

FAQs: Which containers?

- **Question 7: Do minibulks that dealers use for their own application purposes have to comply?**
- **Answer:** No, service containers are not subject to the container regulations.
 - If an applicator transfers a pesticide into a container for the purposes of that applicator applying the pesticide, the container is considered to be a service container. (71 FR 47383, August 16, 2006)

FAQs: Containers

- Question 8: How will EPA's regulations affect containers like this (strapped to trailers) and that are used for sale or distribution (e.g., grower goes to retailer or retailer delivers to grower)?

Poly tanks generally are manufactured by using a process known as rotational molding. A powdered polymer compound with an ultraviolet (UV) protection package is poured into a two-piece mold. The amount of UV protection varies by tank type and manufacturer. The mold is clamped shut and heated in a hot oven. During the heating process, the mold is tumbled in two directions; as the powdered polymer melts, the tumbling causes it to coat the inside of the mold. Once completed, the mold is moved into a cooling chamber where the temperature is slowly decreased. The completed tank is then removed from the mold.

This process molds poly tanks as a single piece. A visible external seam—known as the parting line—gives the impression that two pieces are joined together. But the parting line is merely an external cosmetic artifact from the manufacturing process; it represents the juncture of the two pieces of the mold, not the tank itself.



Notice the parting line on this tank.

Answer to Question 8

- This situation does not meet the exemption from the refillable container requirements in §165.45(h)(1) for transport vehicles with pesticide-holding tanks that are an integral part of the transport vehicle. Therefore:
 - The tank must comply with the refillable container requirements and the relevant repackaging requirements, including being on the registrant's description of acceptable containers & being cleaned if necessary.
 - This appears to be a tank designed for storage and not transport. See Purdue Extension document PPP-77 for more info: <https://mdc.itap.purdue.edu/>

FAQs: DOT

Question 9: This is a new tank that the registrant says meets the DOT standards, but it does not have the UN marking on it. Would this container meet EPA's requirements?

- A. Yes
- B. No
- C. Maybe



Answer to Question 9

C. Maybe

- ❖ The DOT standards that are incorporated in §165.45(a) authorize the use of some “portable tanks” that comply but do not require the UN marking.
- ❖ If you (an inspector) come across a tank without the UN marking, check to see if the tank is on the registrant’s description of acceptable containers. If so, the refiller is in compliance.
- ❖ It is the registrant’s responsibility to ensure that a container identified on the description of acceptable containers meets the refillable container requirements.

FAQs: DOT

Question 10: Can a retailer conduct the leakproofness test?

- Answer: Yes, a retailer (or anyone) can conduct the leakproofness test & DOT inspections if he/she:
 - Follows procedure in DOT regs;
 - Marks the container;
 - Keeps records.

[49 CFR 180.352]



FAQs: Rinsate

- **Question 11: What is EPA doing to address concerns about creating and managing rinsate?**
- **Answer**: We are working on a couple of things to minimize the amount of rinsate produced:
 - Guidance for farmers
 - Don't break tamper-evident seals!
 - Several Q&As (next)
 - Working with CropLife America & ACRC to develop “generic” cleaning instructions

FAQs: Rinsate

- Question 12: Can a corporate operation that has a central repackaging & distribution location utilize its satellite application sites to rinse minibulks?



Answer to Question 12

- Answer: It is acceptable for a corporate operation to utilize its satellite application locations to rinse minibulks if:
 - The corporation cleans the minibulks according to the registrant's residue removal procedure for that product;
 - The practice of using satellite sites to rinse containers is consistent with the repackaging contract with the registrant (not prohibited); and
 - The corporation follows other applicable regulatory requirements.

FAQs: Rinsate

- **Question 13**: The regs require a refiller to rinse the container if necessary before refilling it. It is possible for farmers to do that rinsing?
- **Answer**: In general, it is possible for a refiller to enter into a contract with another person to conduct certain activities, e.g., cleaning minibulks.
 - Entering into contract does not relieve refiller of the responsibilities in the regs
 - Must be consistent w/ repackaging contract (not prohibited)
 - Contractor must follow registrant's residue removal procedure.

FAQs: Other

- **Question 14: As a refiller, do I have to track my minibulk containers?**
- **Answer:** The regulations do not require you to know exactly where each minibulk container is at any given point in time. The regulations do require you to record the following info each time you refill a container:
 - (1) Date; (2) serial number/code of container; and (3) EPA Reg. No. of the pesticide.
 - Also, if you do the DOT leakproofness testing and DOT inspections, you must keep records of those.

FAQs: Other

- **Question 15: Is it acceptable to include Container Disposal instructions for all container types in which a pesticide is sold on the product label?**
- **Answer**: While EPA prefers that the label includes instructions for the specific container only, it may be acceptable to have instructions for multiple containers, provided:
 - Instructions are presented so sufficiently clear to be read & understood by end user; and
 - They will not detract from other label provisions.

FAQs: Other

- **Question 16: When a product is sold under a supplemental distribution arrangement, who is responsible for furnishing the description of acceptable containers & refilling cleaning procedures to the refiller?**
- §165.40(b) & 165.60(b): You must comply with refillable container & repackaging regulations if you are a registrant who distributes or sells pesticide in refillable containers...
- §152.132 Supplemental Distribution: The distributor is considered an agent of the registrant for all intents and purposes under the act, and both the registrant & the distributor may be held liable for violations pertaining to the distributor product.

Answer to Question 16

- Answer: The basic registrant is responsible for entering into a contract with the refiller and for furnishing the cleaning instructions & description of acceptable containers.
- Depending on the contractual arrangement between the registrant & distributor, the distributor might be able to enter into a contract with the refiller & furnish the documents. In this case, the registrant & distributor would each be responsible for complying, per §152.132.

FAQs: Other

Question 17: A retail facility does not have a containment pad (which is required). A pesticide registrant delivers pesticide and fills a bulk tank at the facility without using a portable pad. Who would be cited for this violation?

- **Answer:** The retail facility would be cited for the violation. The applicability section (§165.80(b)) includes retail facilities; doesn't include registrants.
- Registrant – product stewardship?



For More Information

Environmental Protection Agency (EPA)

- <http://www.epa.gov/pesticides/regulating/containers.htm>
- Nancy Fitz, 703-305-7385; fitz.nancy@epa.gov

American Agronomic Stewardship Alliance (AASA)

- <http://www.aginspect.org/USEPA.html>

CropLife America (CLA)

- <http://www.croplifeamerica.org> & www.croplifefoundation.org

Mid America CropLife Association (MACA)

- <http://www.maca.org/edu>

Pesticide Stewardship: See Container Handling for inspection video

- <http://pesticidestewardship.org/Pages/default.aspx>

State Inspector Training

- <http://pirt.pested.psu.edu/resources>

Other Questions?