

EPA's Pesticide Container Regulations: What are EPA and the States Seeing in the Field?

TPSA Conference

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Outline of Presentations

- Review container-containment rule
- Inspections & enforcement: Who does what?
- What are we seeing/hearing?
- Frequently asked questions/potential issues



Container-Containment Rule Overview

August 16, 2009

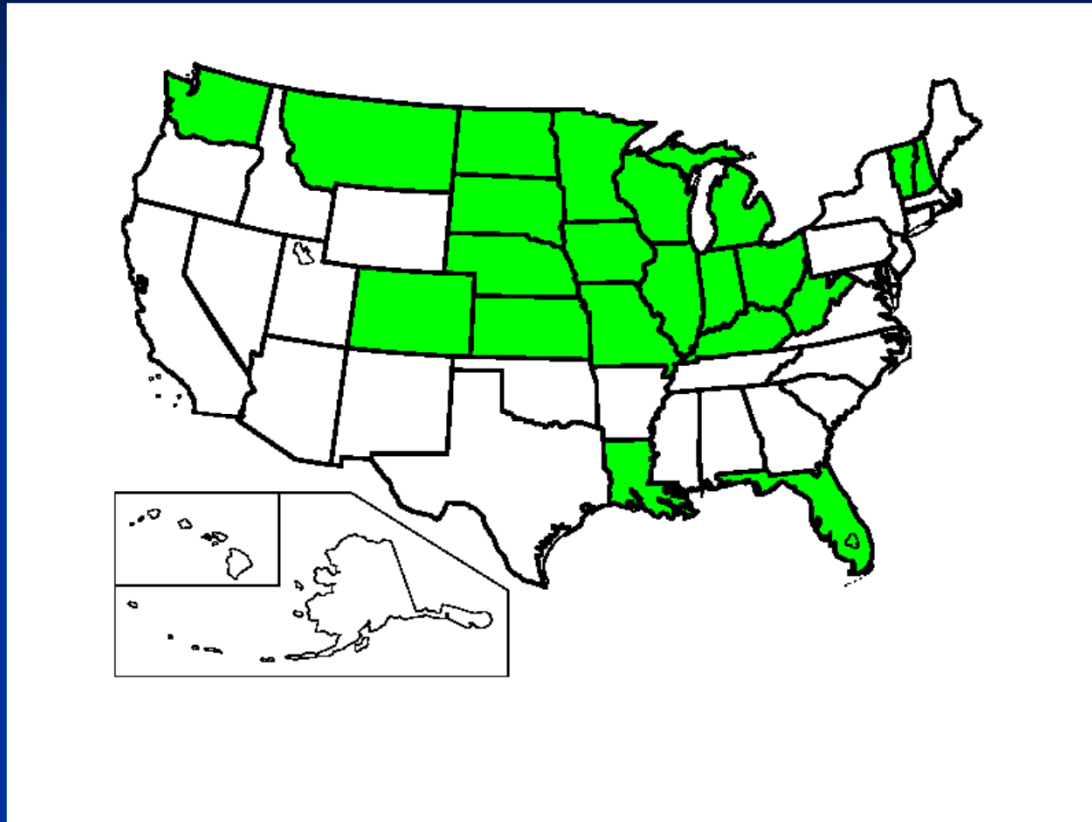
- Nonrefillable container (registrants)
- Containment (agricultural retailers, commercial applicators & custom blenders)

August 16, 2011

- Refillable containers (registrants)
- Repackaging (registrants & refillers)
- Labels (registrants)

States with Pesticide Containment Regs

CO	LA	ND
FL	MI	OH
IL	MN	SD
IN	MO	VT
IA	MT	WA
KS	NE	WV
KY	NH	WI



- EPA authorized these 21 States to continue implementing the state pesticide containment regulations in lieu of the federal containment regulations.
- Federal container regulations apply in all States!

Inspections & Enforcement: Who does what?

Containment

- 21 states: state inspects and enforces
- Other states, territories & Indian country: state or EPA inspects; EPA enforces

Containers

- Generally, state or EPA inspects; EPA enforces
 - Like producer establishment inspections
 - Observations from WI DATCP
- A few states have adopted container regs by reference & can enforce directly under state authority

Goals of the Refillable Container & Repackaging Regulations

- Ensure the **integrity/strength** of refillable containers
- Minimize the potential for **cross contamination**
- Ensure that containers and repackaging **comply with federal pesticide law** (FIFRA)
- **Encourage** the use of refillable containers



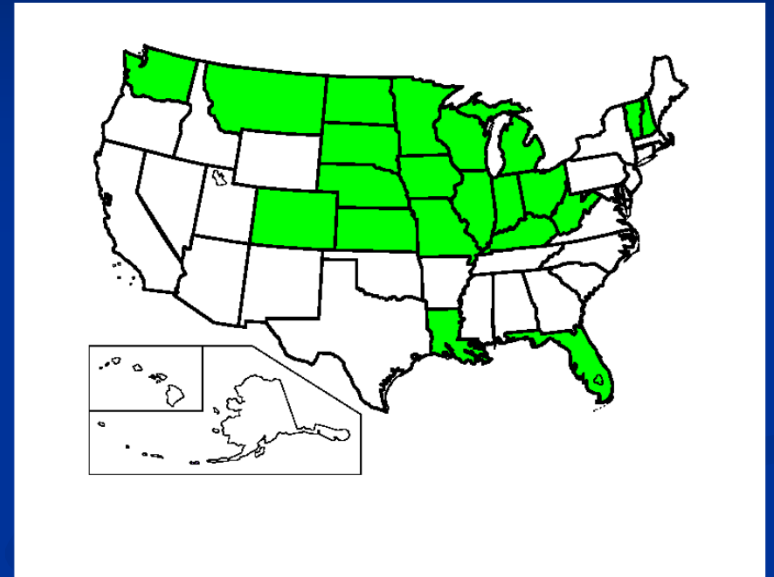
Portable refillable containers must:

- Be a refillable container that is identified on the registrant's description of acceptable containers;
- Comply with the DOT standards that EPA adopted (generally Packing Group III);
- Be durably marked with a serial number/identifying code;
- Have a tamper-evident device or a one-way valve (or both) on each opening other than a vent; and
- Be sound (in good condition).

[§165.45(e); §165.70(f) & (i)]

What are we seeing?

- Over past 3 years, most inspection & enforcement effort has focused on the containment regulations
 - 29 states, territories, Indian country
- Only 1 year of refillable container/repackaging inspections and label inspections
 - All states, territories, Indian country



What are we seeing?

Refillable container & repackaging

- Overall: pretty good; most people have made the effort to comply
- Possible violations/problems
 - No repackaging contract
 - Put wrong (old) label on minibulk
 - Marking/leakproofness testing
 - Records

What are we seeing?

Labels

- Overall: A lot of work to change all labels
- Possible violations/problems
 - Not having all of the new required language
 - Cannot tell if it is a nonrefillable or refillable container

Frequently Asked Questions and Potential Issues



1. Is the Mini Bulk/IBC subject to EPA's container regulations?

Is the container going to be filled as a service container (when an applicator transfers pesticide into a container for the purposes of that applicator applying the pesticide) or to sell or distribute the pesticide?

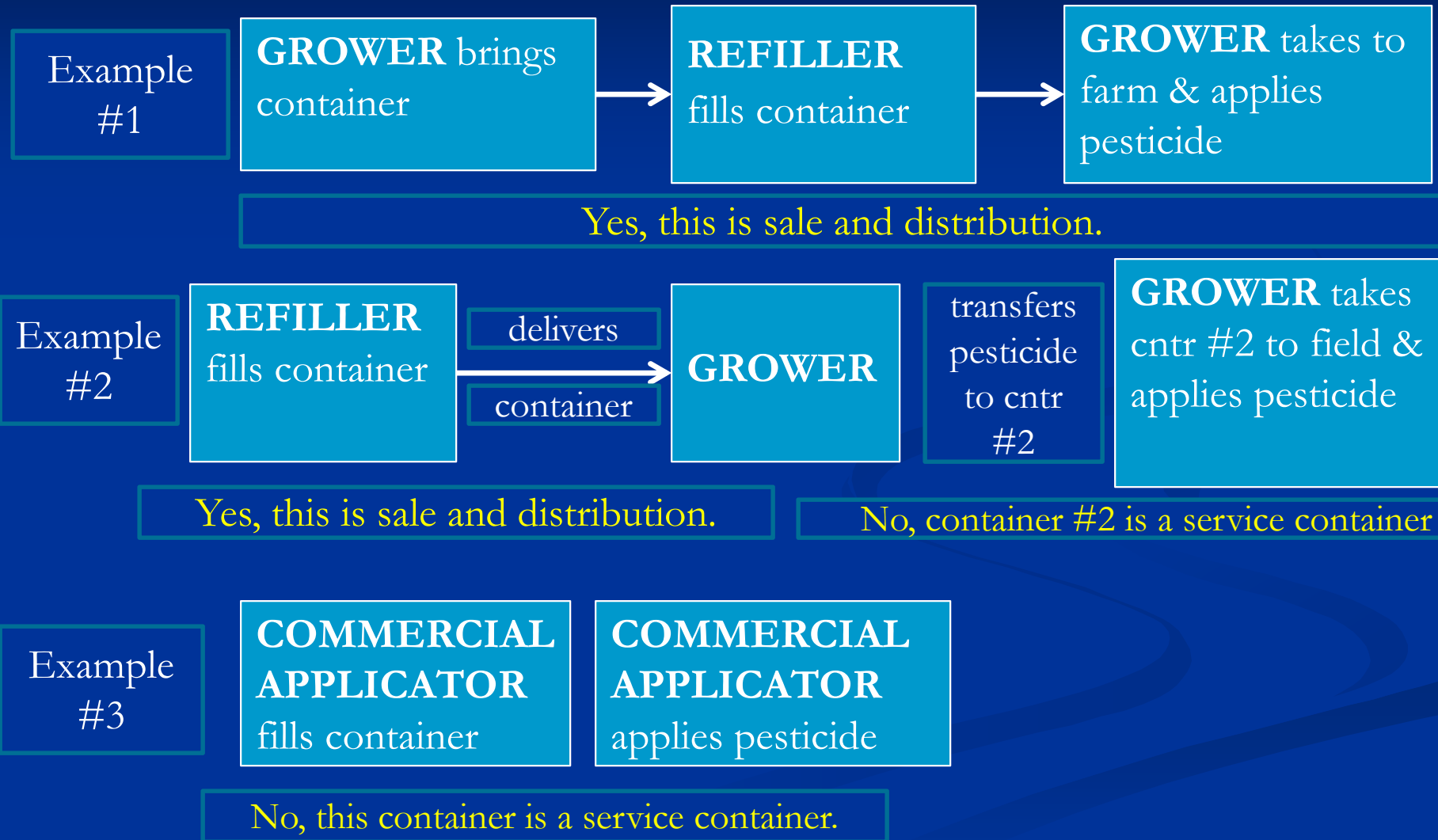
Service container

The container is not subject to any of the pesticide container or repackaging regulations and is not required to have a pesticide label. (EPA does not regulate service containers.) However, EPA believes it is a good management practice to ensure the contents of the service container are identified and the pesticide label is available to the applicator. DOT and OSHA requirements may apply to the service container.

Sell or distribute

The container is subject to the pesticide container and repackaging regulations; the pesticide label requirements; and all other pesticide-related regulations.

Subject to EPA's regulations?

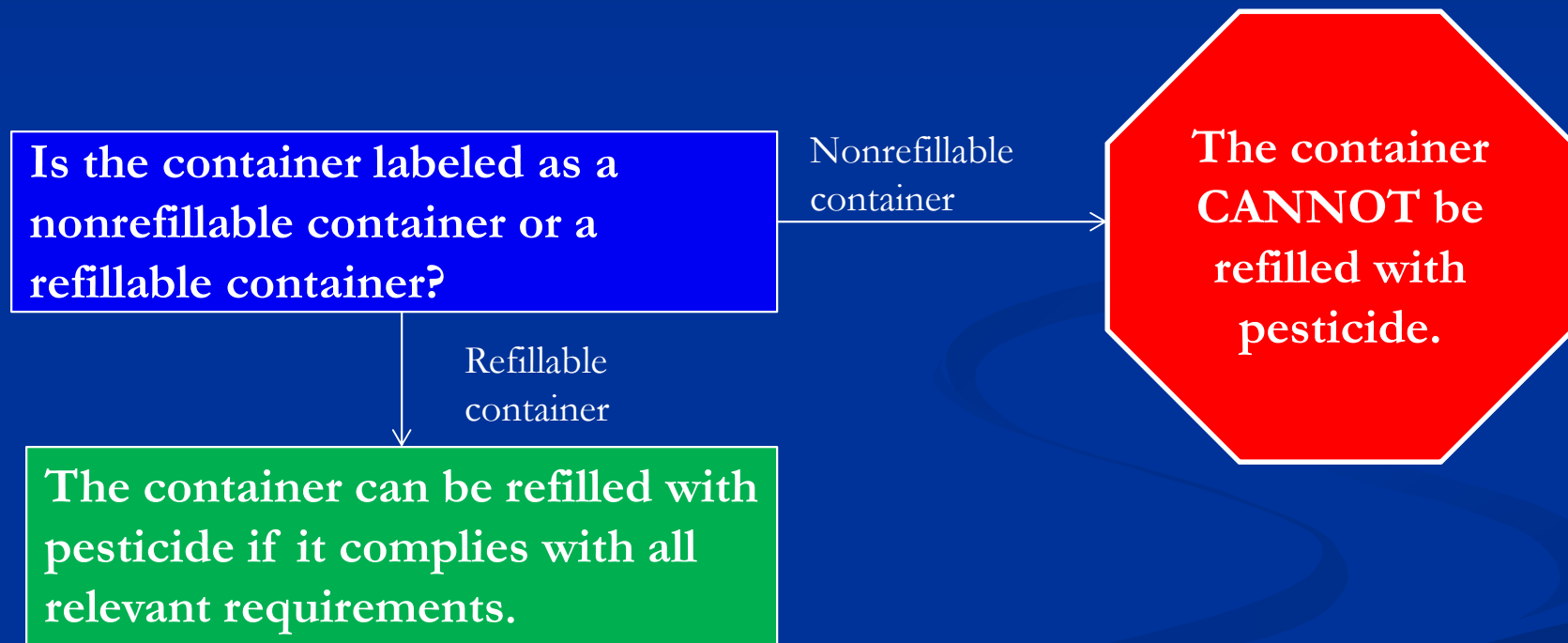


2. Can a retailer fill a refillable container on a farm and, if so, what are the applicable regs?

- Answer: Yes, a retailer can fill a refillable container on a farm as long as all of the conditions for repackaging are met and:
 - Containers must be properly labeled;
 - Portable refillable containers must meet all standards; and
 - Stationary refillable containers must be: on description of acceptable containers; durably marked with a serial number; sound and properly labeled.
- Federal regs do not require containment at farms; state regulations might.

Question 3: Can I refill a container labeled as a nonrefillable container?

Answer: No.



Nonrefillable vs. 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!**

Question 4: Can a minibulk comply with the regulations if it does not have a one-way valve? For example, the valve at the bottom of this minibulk is not a one-way valve. Assume the yellow tie is a tamper-evident device.



- **Answer:** Yes, a minibulk can comply with the refillable container regulations without having a one-way valve. The requirement is to have a tamper-evident device OR a one-way valve on each opening.
- However, the end user has to break the tamper-evident device to remove pesticide from the minibulk. Therefore, when the minibulk is returned, the refiller must clean the container even if he is filling it with the same pesticide.

5. Labels/Labeling

- Label: written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. (FIFRA 2(p))
- EPA reviews (and approves) the product label as part of registration process.
- Some containers have a lot of stickers on them.



Question 6: What is “durable marking” for the serial number/other identifying code?

- Answer: 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**.
- Each refillable container must be marked in a durable and clearly visible manner with a serial number or other identifying code.

Question 6 (cont.): What is “durable marking” for the serial number/other identifying code?

Durable marking includes an adhesive label if it is securely attached = can reasonably be expected to remain affixed during the foreseeable conditions and period of use.
[§156.10(a)(4)]

Serial number can be marked using a marker with durable ink, such as a sharpie, as long as it is marked in a “durable and clearly visible manner.”



Question 7: What counts as a tamper-evident device?

Answer: Tamper-evident device means a device which can be visually inspected to determine if a container has been opened.
[§165.3]



Question 7, cont.

- Goal of the requirement: to give refillers reasonable indication about whether substances other than the pesticide product for which the containers are labeled may have been introduced into the containers.
- While a standard clear zip tie may meet the definition, pesticides in containers that bear tamper-evident devices that do not appear secure and are easily “fakeable” may be subject to heightened enforcement scrutiny to insure the integrity of the pesticide.

Question 8: What recordkeeping does a refiller have to do?

Answer: A refiller must keep:

- A copy of the repackaging contract, the refillable container residue removal (cleaning) procedure & description of acceptable containers.
- Each time a container is refilled, records of the:
(1) EPA Reg. No. of the pesticide; (2) date; and
(3) container identifier.
- If the refiller does DOT inspections and leakproofness tests, records of the results of those DOT inspections and tests.

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/PCC-Rule>

Mid America CropLife Association (MACA)

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

Pesticide Stewardship: See Container Handling for inspection video

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

The Pesticide Stewardship Alliance

- <http://tpsalliance.org>

Questions?

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