



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR - 9 2012

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

MEMORANDUM

**SUBJECT:** Transmittal of the Final Revised Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Pesticide Container / Containment Regulations (Appendix H)

**FROM:** Rosemarie A. Kelley, Director *RJK/SJK RSK*  
Waste and Chemical Enforcement Division

**TO:** Addressee List

This memorandum transmits the final revised Enforcement Response Policy (ERP) for actions taken pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) pesticide container/containment regulations. The revised ERP is immediately applicable and should be used to calculate penalties sought in all FIFRA administrative actions or accepted in settlement of administrative civil enforcement actions brought under the statute after the date of the ERP, regardless of the date of the violation. To the maximum extent practicable, the revised ERP shall also apply to the settlement of administrative enforcement actions instituted but not yet resolved prior to the date the revised ERP is issued. This revised ERP is intended to provide an updated framework for the U.S. Environmental Protection Agency (EPA) to use in determining the appropriate enforcement response and for calculating penalties for violations of FIFRA pesticide container/containment regulations at 40 CFR 165. In addition, this revised ERP provides enforcement personnel with increased flexibility to address an expanding range of violations of the container/containment regulations promulgated at 40 CFR 165 while ensuring consistent and equitable enforcement on a national scale.

I wish to thank the workgroup and everyone who provided comments throughout the development of this document. Regional comments were considered carefully by the Waste and Chemical Enforcement Division (WCED) and incorporated into the final revised ERP in all instances where WCED found the recommended change consistent with the Agency's enforcement objectives and policies or clarified the document.

WCED recognizes this appendix deals with newly promulgated regulations and that you and your staff will require assistance from us in implementing some of these changes. WCED is committed to providing that assistance through consultations, guidance, and training during the course of this fiscal year.

If you have questions or concerns, please contact Brian Joffe, Branch Chief, at (202) 564-2229 or Brian Dyer of his staff at (202) 564-4166.

Attachment

cc: Regional Enforcement Coordinators  
National Pesticide Practitioners Conference Call Members  
National FIFRA Container/Containment ERP Workgroup Members

**APPENDIX H**

**ENFORCEMENT RESPONSE POLICY  
FOR THE FIFRA PESTICIDE  
CONTAINER/CONTAINMENT REGULATIONS**

**Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency**

**March 2012**

## APPENDIX H

# ENFORCEMENT RESPONSE POLICY FOR THE FIFRA PESTICIDE CONTAINER/CONTAINMENT REGULATIONS

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## I. INTRODUCTION

This document sets forth guidance for the U.S. Environmental Protection Agency (EPA or the Agency) to use in determining the appropriate enforcement response and penalty amount for violations of the regulations governing pesticide containers and containment issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act). The goal of this Enforcement Response Policy (ERP) is to provide predictable and consistent enforcement responses and penalty amounts for violations of those regulations. This ERP also satisfies the requirement in Appendix A of the FIFRA Enforcement Response Policy (December 2009) to establish gravity levels for violations of FIFRA Section 19.

Pursuant to FIFRA §§ 19(e) and (f), 7 U.S.C. §§ 136q(e) and (f), on August 16, 2006, the Agency published in the Federal Register (71 FR 47330 – 47437) the final rule, “Pesticide Management and Disposal; Standards for Pesticide Containers and Containment.” The rule establishes requirements for pesticide containers to: minimize human exposure during container handling; facilitate container disposal and recycling; and encourage the use of refillable containers. The rule also establishes requirements to protect the environment from releases at bulk storage sites and prevent spills and leaks at refilling and dispensing operations. The rule establishes compliance deadlines for registrants, refillers, retailers, and pesticide users. The final rule was amended on October 29, 2008 (73 FR 64216 – 64228). Where 40 C.F.R. § 165 Subpart D of the regulations conflict with the Enforcement Policy Applicable to Bulk Shipments of Pesticides (July 11, 1977), as amended on March 4, 1991, (“Bulk Shipment Policy”), the regulation and this policy supersede the Bulk Shipment Policy. Where there is no conflict, the Bulk Shipment Policy will remain in effect until it has been rescinded or replaced.

The procedures set forth in this document are intended solely for the guidance of government professionals. They are not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this policy and to change it at any time without public notice.

## II. CONTAINER/CONTAINMENT REQUIREMENTS

### A. Background

The “Pesticide Management and Disposal; Standards for Pesticide Containers and Containment” rule (“container/containment” rule) establishes requirements for nonrefillable containers, refillable containers, repackaging of pesticide products, container labeling, and containment structures. The requirements apply to registrants, refillers, pesticide users, agricultural retailers, commercial applicators, and custom blenders.

Nonrefillable container standards are found at 40 C.F.R. §§165.20-165.27. Major requirements for registrants selling and distributing nonrefillable containers include: Department of Transportation (DOT) container design, construction and marking standards; container dispensing capability; standard closures; residue removal; and recordkeeping. The purpose of these standards is to ensure that containers are strong and durable, minimize human exposure

during container handling, and facilitate container disposal and recycling.

Refillable container standards are found at 40 C.F.R. §§165.40-165.47. Major requirements for registrants selling and distributing refillable containers and for refillers include: DOT container design, construction and marking standards; serial number marking; one-way valves or tamper-evident devices; and stationary container requirements. The purpose of these standards is to ensure that containers are strong and durable, minimize cross-contamination of pesticides distributed in refillable containers, and encourage the use of refillable containers to reduce container disposal problems.

Standards for repackaging pesticide products into refillable containers are found at 40 C.F.R. §§165.60-165.70. These standards for repackaging pesticide products require: 1) registrants to develop residue removal procedures and a description of acceptable containers by registrants; 2) registrants to comply with the repackaging conditions; 3) refillers to obtain and follow the registrant's information; and 4) refillers to clean, inspect, and label containers before refilling them. These regulations are intended to minimize cross-contamination of pesticides distributed in refillable containers, codify safe refilling management practices, and encourage the use of refillable containers to reduce container disposal problems.

Container labeling requirements are found at 40 C.F.R. §§156.140-156.159. Registrants are required under these regulations to label containers as either nonrefillable or refillable. Depending on which type of container is used, there are additional requirements for label statements describing how containers must be disposed, recycled, or cleaned.

Standards for pesticide containment structures are found at 40 C.F.R. §§165.80-165.97. Agricultural retailers, commercial applicators, and custom blenders are required: 1) to have secondary containment structures around any large tanks; 2) to have containment pads for pesticide dispensing areas; 3) to employ good operating procedures; and 4) to inspect tanks and structures monthly. The purpose of these standards is to protect the environment from leaks and spills at bulk storage areas and from contamination due to pesticide dispensing operations.

## **B. Violations**

### **1. FIFRA Section 12(a)(2)(S)**

Under FIFRA § 12(a)(2)(S), it is unlawful for any person to violate any regulations issued under FIFRA § 19. The container/containment regulations were issued pursuant to subsections 19(e) and 19(f). Accordingly, the failure by any person to comply with the terms of 40 C.F.R. Part 165 and 40 C.F.R. §§ 156.140 through 156.159 constitutes a violation of FIFRA § 12(a)(2)(S).

### **2. FIFRA Section 12(a)(1)(A)**

Under FIFRA § 12(a)(1)(A), it is unlawful for any person to distribute or sell a pesticide that is not registered. If a refiller changes the formulation of a pesticide while refilling a container, the resulting product may be considered an unregistered pesticide.

**3. FIFRA Section 12(a)(1)(C)**

Under FIFRA § 12(a)(1)(C), it is unlawful to distribute or sell any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. Failure to properly clean containers before refilling them could cause the composition of the product to differ.

**4. FIFRA Section 12(a)(1)(E)**

Under FIFRA § 12(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded. When refillable containers are not properly cleaned between deliveries, the pesticide in the container may become adulterated. If a pesticide container does not contain the required labeling statements from 40 C.F.R. §§ 156.140 through 156.159, the pesticide may be misbranded.

**5. FIFRA Section 12(a)(2)(B)**

Under FIFRA § 12(a)(2)(B), it is unlawful for any person to refuse to: 1) prepare, maintain, or submit records required under FIFRA § 19; 2) submit reports required under FIFRA § 19; and 3) allow any entry, inspection, copying of records, or sampling authorized by FIFRA.

**6. FIFRA Section 12(a)(2)(G)**

Under FIFRA § 12(a)(2)(G), it is unlawful to use any registered pesticide in a manner inconsistent with its labeling. User's failure to comply with label directions required by the container/containment regulations (for example, requirements to properly clean containers) constitutes a violation of FIFRA § 12(a)(2)(G).

**7. FIFRA Section 12(a)(2)(L)**

Under FIFRA § 12(a)(2)(L), it is unlawful for any producer to violate any provision of FIFRA § 7.

**C. Federal Enforcement and State Containment Programs**

40 C.F.R. § 165.97 deals with those states that have primary enforcement responsibility and/or certification programs and that already had pesticide containment regulations in place prior to August 16, 2006, the date of the (unamended) final rule. Under 40 C.F.R. § 165.97(a), these states were given the option to request authority to continue implementing their state containment programs in lieu of the federal regulations. States were required by August 16, 2007 to submit a letter and any supporting documentation to EPA to demonstrate that the state's program was providing environmental protection equivalent to or more protective than that expected to be provided by the federal regulations.

In 2008, EPA determined that 21 states had regulations that provide environmental

protection equivalent to the federal containment regulations. Therefore, EPA authorized the following 21 states to continue implementing their state containment programs in lieu of the federal containment regulations: Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, South Dakota, Vermont, Washington, West Virginia, and Wisconsin. A violation of state containment requirements is also deemed a violation of FIFRA § 12(a)(2)(S).

**D. Relationship to the FIFRA Enforcement Response Policy**

Consistent with the provisions of this ERP, the overall framework of the FIFRA ERP for determining appropriate enforcement responses and assessing civil administrative penalties applies to violations of the container/containment regulations. However, when determining the “Gravity of the Violation” under Section IV.A.3. of the FIFRA ERP, the gravity levels set forth in Attachment A of this ERP should be used for violations of the container/containment regulations.



## ATTACHMENT A

### PESTICIDE CONTAINER/CONTAINMENT VIOLATIONS AND GRAVITY LEVELS

| 40 CFR SECTION   | FIFRA SECTION              | VIOLATION   | LEVEL <sup>1</sup> |
|--|----------------------------|---|--------------------|
| <b>Container Labeling</b>  |                            |   |                    |
| 156.140  | 12(a)(2)(S)<br>12(a)(2)(E) | Registrant failed to properly identify the container type by including the required statements  | 2                  |
| 156.144,<br>156.146,<br>156.156  | 12(a)(2)(S)<br>12(a)(2)(E) | Registrant failed to properly label the pesticide with appropriate residue removal instructions   | 2                  |
| 156 Subpart H  | 12(a)(2)(G)                | User failed to follow the directions required for containers and residue removal  | 2                  |
| <b>Nonrefillable Container Standards, 40 CFR 165.20 – 165.27</b>                                     |                            |   |                    |
| 165.25(a), (b)   | 12(a)(2)(S)                | Registrant failed to meet DOT standards for nonrefillable containers  | 2                  |
| 165.25(d)  | 12(a)(2)(S)                | Registrant's nonrefillable containers do not have standard closures   | 3                  |
| 165.25(e)  | 12(a)(2)(S)                | Registrant failed to meet nonrefillable container dispensing capability   | 3                  |
| 165.25(f)  | 12(a)(2)(S)                | Registrant's nonrefillable containers do not meet residue removal requirements  | 3                  |
| 165.27(b)  | 12(a)(2)(S)<br>12(a)(2)(B) | Registrant failed to maintain records for nonrefillable containers and/or failed to furnish these records for inspection and copying upon request by EPA.                   | 2                  |
| <b>Refillable Container Standards, 40 CFR 165.40 – 165.45</b>  |                            |   |                    |
| 165.45(a), (b)   | 12(a)(2)(S)                | Registrant/refiller failed to meet DOT standards for refillable containers  | 2                  |
| 165.45(d)  | 12(a)(2)(S)<br>12(a)(1)(E) | Registrant's/refiller's refillable containers not durably marked with serial number or other identifying code   | 3                  |
| 165.45(e)  | 12(a)(2)(S)                | Openings of registrant's/refiller's liquid portable pesticide containers do not have one-way valves or tamper-evident devices   | 3                  |
| 165.45(f)(1)   | 12(a)(2)(S)                | Registrant's/refiller's large stationary containers do not meet the container integrity standards   | 2                  |
| 165.45(f)(2)   | 12(a)(2)(S)                | Registrant's/refiller's large stationary containers for liquids do not have a vent or a shutoff valve capable of being locked closed or do not have an external sight gauge | 3                  |
| <b>Standards for Repackaging Pesticide Products into Refillable Containers, 40 CFR 165.60-165.70</b> |                            |   |                    |
| 165.65(c)(1)   | 12(a)(2)(S)                | Registrant who distributes/sells pesticides in refillable containers failed to develop written residue removal procedure  | 2                  |

<sup>1</sup> Gravity levels are those found in Appendix C of the December 2009 FIFRA ERP.

| 40 CFR SECTION               | FIFRA SECTION  | VIOLATION   | LEVEL <sup>1</sup> |
|------------------------------|--|---|--------------------|
|                              |  | for refillable containers   |                    |
| 165.65(c)(2)                 | 12(a)(2)(S)  | Registrant who distributes/sells pesticides in refillable containers failed to develop a description of acceptable refillable containers  | 2                  |
| 165.65(d)(2)                 | 12(a)(2)(S)<br>12(a)(1)(C)<br>12(a)(1)(E)<br>12(a)(1)(A) | A refiller for a registrant who distributes/sells pesticides in refillable containers changes the formulation unless the refiller has a registration for the new formulation  | 1                  |
| 165.65(d)(3)                 | 12(a)(2)(S)  | A refiller for a registrant who distributes/sells pesticides in refillable containers repackages pesticides into a container that is not on the description of acceptable containers  | 2                  |
| 165.65(d)(5)                 | 12(a)(2)(S)  | A refiller for a registrant who distributes/sells pesticides in refillable containers failed to have any of the following items at the establishment before repackaging a pesticide product into any refillable container: the pesticide's label and labeling; refilling residue removal procedure; or description of acceptable containers | 2                  |
| 165.65(d)(6)                 | 12(a)(2)(S)  | A refiller for a registrant who distributes/sells pesticides in refillable containers failed to identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with 40 C.F.R. § 165.65(f)   | 2                  |
| 165.65(d)(7),(e)             | 12(a)(2)(S)  | A refiller for a registrant who distributes/sells pesticides in refillable containers did not inspect each refillable container before repackaging  | 2                  |
| 165.65(d)(8), (f) and/or (g) | 12(a)(2)(S)  | A refiller for a registrant who distributes/sells pesticides in refillable containers did not clean the refillable container, if necessary, according to the refilling residue removal procedure before repackaging   | 1                  |
| 165.65(d)(9), (h)            | 12(a)(2)(S)  | A refiller for a registrant who distributes/sells pesticides in refillable containers fails to ensure that each refillable container is properly labeled according to paragraph (h)   | 2                  |
| 165.65(d)(10), (i)           | 12(a)(2)(S)<br>12(a)(2)(L)<br>12(a)(2)(B)                | The establishment where a registrant who distributes/sells pesticides in refillable containers failed to maintain records in accordance with paragraph (i)  | 2                  |
| 165.67(d)                    | 12(a)(2)(S)  | Registrant who distributes/sells pesticides to refiller for repackaging failed to provide written contract to refiller before distributing/selling the pesticide product to the refiller  | 2                  |
| 165.67(f)(1)                 | 12(a)(2)(S)  | Registrant who distributes/sells pesticides to independent refillers for repackaging failed to develop written residue removal procedure for refillable containers  | 2                  |
| 165.67(f)(2)                 | 12(a)(2)(S)  | Registrant who distributes/sells pesticides to independent refillers for repackaging failed to develop a description of acceptable refillable containers  | 2                  |

| 40 CFR SECTION         | FIFRA SECTION  | VIOLATION   | LEVEL <sup>1</sup> |
|------------------------|--|---|--------------------|
| 165.67(g)              | 12(a)(2)(S)  | Registrant who distributes/sells pesticides to independent refillers for repackaging failed to provide refiller with residue removal procedure, a description of acceptable refillable containers, or the pesticide product's labeling at the time of distribution or sale  | 2                  |
| 165.67(h)              | 12(a)(2)(S)<br>12(a)(2)(B)                               | Registrant who distributes/sells pesticides to independent refillers for repackaging failed to 1) maintain records for the current operating year and for three years after that of each written contract entered with a refiller, the written refilling residue removal procedures, and the written description of acceptable containers; and/or 2) furnish these records for inspection and copying upon request by EPA or any entity designated by EPA, such as a state, another political subdivision, or a tribe | 2                  |
| 165.70(b)              | 12(a)(2)(S)  | Registrant allowed a refiller to repackage its pesticide product into refillable containers and sell and distribute the repackaged product under the registrant's registration when the refiller has failed to meet the conditions for repackaging a registrant's pesticide product into refillable containers  | 1                  |
| 165.70(e)(1)           | 12(a)(2)(S)<br>12(a)(2)(L)                               | Refiller repackaged pesticides but failed to register the establishment where the repackaging took place  | 2                  |
| 165.70(e)(2)           | 12(a)(2)(S)<br>12(a)(1)(A)<br>12(a)(1)(C)<br>12(a)(1)(E) | Refiller repackaged pesticides and changed the formulation to a new formulation for which the refiller does not have a registration   | 1                  |
| 165.70(e)(3)           | 12(a)(2)(S)  | Refiller repackaged pesticides into containers that are not identified in the description of acceptable containers provided by the registrant   | 2                  |
| 165.70(e)(5)           | 12(a)(2)(S)  | Refiller repackaged pesticides before obtaining a written contract from the registrant, the pesticide's labeling, the registrant's written refilling residue removal procedure, or the registrant's written description of acceptable container.  | 2                  |
| 165.70(e)(6), (g)      | 12(a)(2)(S)  | Refiller repackaged pesticides before identifying the pesticide previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (g)  | 2                  |
| 165.70(e)(7), (f)      | 12(a)(2)(S)  | Refiller repackaged pesticides before inspecting each refillable container in accordance with paragraph (f)   | 2                  |
| 165.70(e)(8), (g), (h) | 12(a)(2)(S)  | Refiller repackaged pesticides before cleaning the refillable container, if necessary, according to the refilling residue removal procedures required in paragraphs (g) and/or (h)  | 1                  |
| 165.70(e)(9), (i)      | 12(a)(2)(S)  | Refiller repackaged pesticides but failed to ensure that each   | 2                  |

| 40 CFR SECTION  | FIFRA SECTION                             | VIOLATION  | LEVEL |
|---|---|--|-------|
|   |   | refillable container is properly labeled according to paragraph (i)  |       |
| 165.70(e)(10), (j)  | 12(a)(2)(S)<br>12(a)(2)(B)                | Refiller repackaged pesticides but failed to maintain records in accordance with paragraph (j)   | 2     |
| 165.70(e)(11)   | 12(a)(2)(S)<br>12(a)(2)(L)<br>12(a)(2)(B) | Refiller repackaged pesticide but failed to maintain records required by 40 C.F.R. Part 169  | 2     |
| 165.70(e)(12)   | 12(a)(2)(S)<br>12(a)(2)(B)<br>12(a)(2)(L) | Refiller repackaged pesticides but failed to report as required by 40 C.F.R. Part 169  | 3     |
| 165.70(e)(13)   | 12(a)(2)(S)                               | Refiller repackaged pesticide but the stationary pesticide containers at the establishment failed to meet the standards in § 40 C.F.R. § 165.45(f)   | 2     |
| <b>Standards for Pesticide Containment Structures, 40 CFR 165.80 – 165.97</b> |   |  |       |
| 165.85(a)   | 12(a)(2)(S)                               | Retailers, custom blenders, or commercial applicators failed to meet material standards for new containment structures   | 2     |
| 165.85(b)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet the general design standards for new containment structures found in § 165.85(b)   | 2     |
| 165.85(c)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet capacity standards for new secondary containment units for stationary containers of liquid pesticides and new containment pads in pesticide dispensing areas found in §165.85(c)     | 3     |
| 165.85(d)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet the design requirement for new secondary containment units for stationary containers of liquid pesticides found in §165.85(d)  | 3     |
| 165.85(e)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet design standards for new containment pads in pesticide dispensing areas found in §165.85(e)  | 3     |
| 165.85(f)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet design requirement for new secondary containment units for stationary containers of dry pesticides found in §165.85(f)   | 3     |
| 165.87(a)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet material standards for existing containment structures found in §165.85(a)   | 2     |
| 165.87(b)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet the general design standards for existing containment structures found in §165.85(b)   | 2     |
| 165.87(c)   | 12(a)(2)(S)                               | Retailers, custom blenders, and commercial applicators failed to meet capacity requirements for existing secondary containment units for stationary containers of liquid pesticides and existing containment pads in pesticide dispensing areas found in § | 3     |

| 40 CFR SECTION | FIFRA SECTION              | VIOLATION  | LEVEL <sup>1</sup> |
|----------------|----------------------------|--|--------------------|
|                |                            | 165.87(c)  |                    |
| 165.87(d)      | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to meet design requirement for existing secondary containment units for stationary containers for liquid pesticides found in § 165.87(d)   | 3                  |
| 165.87(e)      | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to meet design requirements for existing containment pads in dispensing areas found in § 165.87(e)   | 3                  |
| 165.87(f)      | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to meet design requirements for existing secondary containment units for stationary containers of dry pesticides found in § 165.87(f)  | 3                  |
| 165.90(a)(1)   | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to manage the structure to prevent pesticides or pesticide-containing materials from escaping, including preventing pesticide residues from being washed off by rain or cleaning   | 3                  |
| 165.90(a)(2)   | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to ensure that pesticide spills and leaks on or in any containment structures are collected and recovered in a manner that ensures protection of human health and the environment and maximum practicable recovery of the pesticide spilled or leaked by the end of the day on which the pesticide have been spilled or leaked except where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment | 1                  |
| 165.90(a)(3)   | 12(a)(2)(S)<br>12(a)(2)(G) | Retailers, custom blenders, and commercial applicators failed to ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable laws and regulations  | 1                  |
| 165.90(a)(4)   | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times  | 3                  |
| 165.90(a)(5)   | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to ensure that each lockable valve on a stationary pesticide container, if required, is closed and locked, or that the facility is locked, whenever the facility is unattended   | 3                  |
| 165.90(b)(1)   | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to make monthly inspections of each containment structure  | 3                  |
| 165.90(b)(2)   | 12(a)(2)(S)                | Retailers, custom blenders, and commercial applicators failed to repair damage or seal cracks and gaps in a timely fashion   | 2                  |
| 165.95         | 12(a)(2)(S)<br>12(a)(2)(B) | Retailers, custom blenders, and commercial applicators failed to maintain records of any of the following: inspection, maintenance, non-stationary containers, or the construction   | 2                  |

| 40 CFR SECTION | FIFRA SECTION | VIOLATION   | LEVEL <sup>1</sup>      |
|----------------|---------------|---|-------------------------|
|                |               | date; and/or failed to furnish these records for inspection and copying upon request by EPA or any entity designated by EPA, such as a state, another political subdivision or a tribe                    |                         |
| 165.97         | 12(a)(2)(S)   | Retailers, custom blenders and commercial applicators fail to meet the requirements of state containment programs in the 21 states where EPA has authorized continued implementation of the state program | 1, 2, or 3 <sup>2</sup> |

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<sup>22</sup> Level of violation should be determined based on the level of violation for the associated federal requirement.