

be applied per year is up to ~1.83g/week or 95g/year.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a new use of a microbial pesticide (*i.e.*, an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Hawaii Department of Agriculture.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: February 1, 2024.

**Charles Smith,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2024-02586 Filed 2-7-24; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0074; FRL-11590-01-OCSPP]

### Cancellation Order for Certain Pesticide Registrations and Amendments to Terminate Uses

#### Correction

In notice document 2023-28547, beginning on page 89448 in the issue of Wednesday, December 27, 2023, make the following correction:

On page 89449, in the first column, beginning on the 13th line beneath the "Section IV. Cancellation Order" the text "[INSERT DATE OF PUBLICATION IN THE **Federal Register**]" should read "December 27, 2023".

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0607; FRL-11686-01-OCSPP]

### Pesticides; Flexible Packaging; Child Resistant Packaging Requirements; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has determined that pesticide products marketed in flexible

packaging (*e.g.*, pouches) 20 fluid ounces or less in size with labeling either directly recommending residential use or reasonably interpreted to permit residential use are subject to the Child Resistant Packaging (CRP) mitigation measures, regardless of acute toxicity requirements, based on the visual similarity of the packaging design to children's food products. As such, pesticide applicants and registrants must comply with CRP for this packaging type at the size limits specified when labeled for or reasonably interpreted to permit residential use and EPA will evaluate applications for new products or amendments to currently registered products submitted to EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended by the Pesticide Registration Improvement Act of 2022 (referred to as "PRIA 5"). Changes to packaging to implement CRP measures on existing products must be submitted as described in this document to allow for CRP data review. Additionally, the Agency is including recommended labeling mitigation for all flexible packaging, regardless of packaging size and intended use site.

**DATES:** If a registrant has a registered pesticide product in flexible packaging that is not compliant with this determination, the registrant must contact the appropriate EPA Product Manager by August 6, 2024.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2023-0607, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person is available at <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Charles Smith, Registration Division (7505M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 305-7090; email address: [RD@epa.gov](mailto:RD@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. Does this action apply to me?

You may be potentially affected by this action if you currently market or propose to market a pesticide in flexible packaging (*e.g.*, pouches). The following list of entities with North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this

document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### B. What is the Agency's authority for taking this action?

EPA is taking this action pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, as amended by the Pesticide Registration Improvement Act of 2022 (referred to as "PRIA 5"), Public Law 117-328, and the packaging requirements for pesticides and devices promulgated in 40 CFR part 157.

###### C. What action is the Agency taking?

This document announces that EPA has determined pursuant to 40 CFR 157.22(a)(6) and (b), that pesticide products marketed in flexible packaging (*e.g.*, pouches) in 20 fluid ounces or less in size with labeling either directly recommending residential use or reasonably interpreted to permit residential use are subject to the Child Resistant Packaging (CRP) mitigation measures, regardless of acute toxicity requirements, based on the visual similarity of the packaging design to children's food products. As such, pesticide applicants and registrants must comply with CRP for this packaging type at the size limits specified when labeled for or reasonably interpreted to permit residential use and EPA will evaluate applications for new products or amendments to currently registered products submitted to EPA under IFRA, as amended by PRIA 5. Changes to packaging to implement CRP measures on existing products must be submitted as described in this document to allow for CRP data review. Additionally, the Agency is including recommended labeling mitigation for all flexible packaging, regardless of packaging size and intended use site.

## II. Background

EPA has seen an increased interest from pesticide manufacturers in the use of flexible packaging (*e.g.*, pouches) to store and distribute products, especially insecticides and herbicides that residential users can dilute and apply to their lawn and garden. These packages contain a concentrated form of pesticide product, without added water, which ready-to-use (RTU) products typically contain. By removing the water, pesticide packaging is smaller and

lighter, reducing plastic consumption and shipping costs.

To date, EPA has not been made aware of incidents with children involving pesticides in flexible packaging, potentially due to the relatively new occurrence of such products on the market. However, due to multiple incidents involving children ingesting other toxic products that were sold in similar packaging resembling food products, as documented in public news sources, EPA has determined that there is potential for accidental injury or illness which CRP could reduce or prevent. The following is a list of case studies of this occurrence in other industries have been outlined:

- Twelve elementary students in Alaska accidentally drank floor sealant in a product designed similar to milk containers (Ref. 1).
- A nine-year-old boy accidentally ingested a 'flame color changing' agent sold in packaging with a similar design to children's candy (Ref. 2).
- Numerous news stories have reported children ingesting cannabis-infused sweets marketed to look similar to candy products (Refs. 3 through 7).

Action taken by the Agency to mitigate risks associated with flexible packaging has precedent from other Federal agencies. For example, the sale of edible products containing Delta-8 THC in packaging almost identical to children's food products prompted the Federal Trade Commission (FTC) and U.S. Food and Drug Administration (FDA) to send Cease and Desist letters to six companies (Ref. 4).

With this determination, the Agency intends to prevent similar inadvertent exposure to residential use pesticide products. The Agency also reminds registrants that, pursuant to FIFRA section 6(a)(2) and 40 CFR part 159, pesticide manufacturers are required to submit information regarding unreasonable adverse effects on the environment, including incidents affecting humans or other non-target organisms; such information must be submitted to EPA within 15 days after learning of any allegations involving human fatality and within 30 days after the end of each 30-day report accumulation for other human incidents.

### III. EPA Determination Regarding Flexible Packaging

#### A. CRP Requirements for Pesticides

EPA sets standards for pesticide containers and labeling in 40 CFR parts 156 and 165, including design, construction, and labeling requirements to ensure safe and uniform packaging.

To ensure pesticides are packaged in a manner safe for use around children, 40 CFR part 157 describes requirements for CRP on pesticide containers used in residential settings. CRP containers are designed and constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable amount of time. Generally, pesticide products that meet the toxicity criteria in 40 CFR 157.22(a)(1) through (4) and are labeled for or reasonably interpreted to permit residential use as contemplated in 40 CFR 157.22(b), are required to be packaged in CRP, unless the products satisfy the exemptions of 40 CFR 157.24 (e.g., are restricted use products or are packaged in a large size).

#### B. CRP Test Guidelines

Prior to a pesticide product being packaged and sold in CRP, the registrant must conduct, and submit to EPA for review and approval, CRP testing performed in accordance with the protocol specified at 16 CFR 1700.20. Selected child testers must be between the ages of 42–51 months. Children are presented an empty package for five minutes to test if they can open it. If after five minutes the child does not open the package, the test administrator will provide a physical demonstration without verbal instructions on how to open the package and then allow the child an additional five minutes to attempt to open the package. A test failure is defined as any a child who opens the special packaging or gains access to its contents.

The sequential test is initially conducted using 50 children, and, depending on the results, it is determined whether the package is either child-resistant or not child-resistant or whether further testing is required. Further testing is required if the results are inconclusive and involves the use of one or more additional groups of 50 children each, up to a maximum of 200 children. If, after conducting the two 5-minute tests, fewer than 5 failures occur with the first 50 testers, then no further testing is required, and the package passes the Child Resistance Effectiveness test. If more than 6 or fewer than 14 failures occur with the first 50 testers, then no further testing is required, and the packages fails the Child Resistance Effectiveness test.

#### C. CRP for Flexible Packaging

Packaging for products with a toxicity below the threshold specified in 40 CFR 157.22(a)(1) through (4) would not ordinarily trigger the requirement for CRP. However, EPA has determined under 40 CFR 157.22(a)(6) that pesticide products in flexible packaging resembling child food containers have characteristics that present a serious hazard of accidental injury or illness which CRP could reduce. As most children's food pouches are between 3 and 5 fluid ounces, the Agency believes that CRP measures on pesticide products 20 fluid ounces or less would provide a sufficient margin of protection to avoid children mistaking pesticidal flexible packaging for food pouches. While these products are relatively new to the market, flexible packaging containing pesticides are generally 1 to 54 fluid ounces. Flexible packaging that is larger than 20 fluid ounces are much larger than traditional children's food pouches and are unlikely to be mistaken by adults or children as food. This notice conveys that EPA has determined that, pursuant to 40 CFR 157.22(a)(6) and (b), pesticide products marketed in flexible packaging (e.g., pouches) 20 fluid ounces or less in size with labeling either directly recommending residential use or reasonably interpreted to permit residential use are subject to CRP mitigation measures under 40 CFR part 157, regardless of acute toxicity requirements, based on the visual similarity of the packaging design to children's food products.

This document further conveys to applicants and registrants that CRP is necessary for this packaging type at the size limits specified when labeled for or reasonably interpreted to permit residential use and will be evaluated for applications for new products or for amendment of currently registered products submitted under FIFRA section 33, *i.e.*, PRIA 5. Changes to packaging to implement CRP measures on existing products must be submitted as a PRIA R340/341, A572, or B680/681, not as a fast-track non-PRIA amendment, to allow for CRP data review.

Changes in the shape, color, or composition of packaging and changes in labeling statements due to modification of package size and type may be done by notification only if all criteria in PRN 98–10 section II.E. are met. Due to the Agency's determination, products marketed in flexible packaging do not meet the following criteria in PRN 98–10 section II.E and may not modify the package size and type via notification:

“. . . 3. Either before or after the proposed change, the product is neither subject to child resistant packaging (CRP), nor has the registrant voluntarily used CRP; [ . . . ]

6. The package size is not reduced to the point that the net contents of the package is smaller than the dosage required by directions for use or that a reduced package size will require CRP;

7. The package size or other characteristics is not changed in a way which violates EPA mandated restrictions imposed on a product (e.g., size limitations may be imposed on a product to limit its use to homeowners only).”

#### *D. Additional Recommendations for Flexible Packaging and Labeling*

In addition to determining that CRP requirements are necessary for pesticidal flexible packaging products 20 ounces or less in size with labeling either directly recommending residential use or reasonably interpreted to permit residential use, the following additional mitigation measures are recommended for all pesticide products sold in flexible packaging, regardless of size or intended use site:

- No child-attractant packaging colors (e.g., neon colors, bright colors, more than three colors). Packaging should be primarily in black, white, or grey.
- Flexible packaging (e.g., pouches) should be packaged by the manufacturer within an outer box containing the full product label for sale to the consumer.
- All product packaging (e.g., outer box and flexible packaging) should contain a graphic or icon stating, ‘Not A Food Product.’

The following statements should be included in the Directions for Use section of the label:

- ‘Store pouches in closed product box and away from children and food.’

*For pouches 20 fluid ounces or less:* ‘Each pouch is for one-time use only. Do not store any opened pouches. Empty the entire contents of the pouch into the container. Once empty, discard the empty pouch immediately into a secure trash receptacle that cannot be accessed by children.’

- *For pouches greater than 20 fluid ounces:* ‘Once empty, discard the empty pouch immediately into a secure trash receptacle that cannot be accessed by children.’

#### *E. Next Steps*

These mitigation measures will be reflected in an updated version of the Label Review Manual to serve as guidance for registrants pursuing flexible packaging containers.

As pesticides in flexible packaging is a relatively new occurrence, EPA does not believe that there are any registered pesticide products in flexible packaging

without the CRP and mitigation language above. If a registrant has a registered pesticide product in flexible packaging that is not compliant with the determination as described in this document, the registrant must contact the appropriate EPA Product Manager by August 6, 2024.

#### **IV. References**

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Boyette, C. 2022. Alaska Schoolchildren Were Served Floor Sealant Instead Of Milk At A Child Care Program, School District Says. *CNN*. June 16, 2022. <https://www.cnn.com/2022/06/16/us/alaska-students-floor-sealant-milk/index.html>. Accessed on September 25, 2023.
2. WRAL Staff. 2023. Boy, 9, Hospitalized After Mistaking Chemical For Candy. *WAGM TV*. January 11, 2023. <https://www.wagmtv.com/2023/01/11/boy-9-hospitalized-after-mistaking-chemical-candy/>. Accessed on September 25, 2023.
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4. U.S. Federal Trade Commission (FTC) and U.S. Food and Drug Administration (FDA), 2023. FTC Sends Cease and Desist Letters with FDA To Companies Selling Edible Products Containing Delta-8 THC in Packaging Nearly Identical to Food Children Eat. *Federal Trade Commission*. July 5, 2023. <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-sends-cease-desist-letters-fda-companies-selling-edible-products-containing-delta-8-thc>. Accessed on 9/25/2023.
5. Kaur, H. and D. Shepherd. 2020. Two Children Hospitalized After Eating THC-infused Candy Accidentally Given Out By A Local Food Bank. *CNN*. April 7, 2020. <https://www.cnn.com/2020/04/06/us/children-thc-candy-food-bank-trnd/index.html>. Accessed on September 25, 2023.
6. Roberts, C. 2022. First The Girl Scouts, Now Pepsi: Why Big Brands Hate Marijuana. *Forbes*. April 30, 2022. <https://www.forbes.com/sites/chrisroberts/2022/04/30/first-the-girl-scouts-now-pepsi-why-big-brands-hate-marijuana/?sh=5e7a10735108>. Accessed on September 25, 2023.
7. Semley, J. 2023. Cartoon Packaging And An ‘Inconsolable’ High: When Magic Mushroom Chocolate Gets Into The Wrong Hands. *The Guardian*. June 12, 2023. <https://www.theguardian.com/society/2023/jun/12/mushrooms-chocolate-psilocybin-psychedelics-children>. Accessed on September 25, 2023.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: February 1, 2024.

**Edward Messina,**

*Director, Office of Pesticide Programs.*

[FR Doc. 2024–02587 Filed 2–7–24; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA–HQ–OAR–2011–0742; FRL–11599–01–OAR]**

#### **Information Collection Request; Comment Request; Air Pollution Regulations for Outer Continental Shelf (OCS) Activities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Air Pollution Regulations for Outer Continental Shelf (OCS) Activities” (EPA ICR No. 1601.10, OMB Control No. 2060–0249), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of the ICR, which is currently approved through May 31, 2024. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before April 8, 2024.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0724, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA’s policy is that all comments received will be included in the public