

not limited to areas such as non-agricultural outbuildings, non-commercial greenhouses, pleasure boats and recreational vehicles; or

(3) In or around any preschool or day care facility.

*Technically feasible*, when applied to child-resistant packaging, means that the technology exists to produce the child-resistant packaging for a particular pesticide.

*Unit packaging* means a package that is labeled with directions to use the entire contents of the package in a single application.

[51 FR 21286, June 11, 1986, as amended at 73 FR 75596, Dec. 12, 2008]

#### § 157.22 When required.

Unless exempted under § 157.24, a pesticide product must be distributed and sold in child-resistant packaging complying with § 157.32 if it meets both of the following criteria:

(a) *Toxicity criterion*. Based upon testing with an appropriate test species, the product meets any of the following toxicity criteria:

(1) The pesticide has an acute oral LD<sub>50</sub> of 1.5 g/kg or less;

(2) The pesticide has an acute dermal LD<sub>50</sub> of 2000 mg/kg or less;

(3) The pesticide has an acute inhalation LC<sub>50</sub> of 2 mg/liter or less;

(4) The pesticide is corrosive to the eye (causes irreversible destruction of ocular tissue) or causes corneal involvement or irritation persisting for 21 days or more;

(5) The pesticide is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe skin irritation (severe erythema or edema) at 72 hours; or

(6) The pesticide or device has such characteristics that, based upon human toxicological data, use history, accident data or such other evidence as is available, the Agency determines there is serious hazard of accidental injury or illness which child-resistant packaging could reduce; and

(b) *Use criterion*. The product's labeling either directly recommends residential use or reasonably can be interpreted to permit residential use.

#### § 157.24 Exemptions.

(a) *General exemptions*. The Agency hereby exempts from the requirement for child-resistant packaging the following classes of products:

(1) *Products classified for restricted use*.

(i) A product restricted to use by or under the supervision of a certified applicator is not required to be distributed and sold in child-resistant packaging.

(ii) Notwithstanding the exemption in paragraph (a)(1)(i) of this section, the Agency may require the use of child-resistant packaging for a product classified for restricted use by or under the direct supervision of a certified applicator if the Agency determines that the product poses a risk of serious accidental injury or illness which child-resistant packaging could reduce. If the Agency makes such a determination, it will notify the registrant in writing and provide a short statement of the basis of its determination. The registrant will then have 30 days to request a hearing on the Agency's determination. Thereafter the Agency will decide whether to require the product to be distributed only in child-resistant packaging and will notify the registrant of its decision.

(2) *Products packaged in large sizes*. (i) Except as provided by paragraph (a)(2)(ii) of this section, a product is not required to be in child-resistant packaging if distributed and sold in the following sizes:

(A) If the product is a solid product, regardless of pesticide type, a size of 50 pounds or greater;

(B) If the product is a liquid product intended for use in swimming pools, a size greater than 7.5 gallons by volume;

(C) If the product is a liquid product intended for any other pesticide use, a size of 5 gallons or greater by volume;

(D) If the product is packaged as an aerosol (measured by weight), regardless of pesticide type, a weight of 2 pounds or greater.

(ii) The Agency may require that a product packaged in a size exceeding that listed in paragraphs (a)(2)(i) (A) through (D) of this section be distributed and sold only in child-resistant packaging if the Agency determines that the product is, or is intended to be, distributed or sold to homeowners

or other members of the general public. If the Agency makes such a determination, it will notify the registrant in writing and provide a short statement of the basis of its determination. The registrant will then have 30 days to request a hearing on the Agency's determination. Thereafter the Agency will decide whether to require the product to be distributed only in child-resistant packaging and will notify the registrant of its decision.

(b) *Exemptions requiring Agency approval.* The Agency may, in accordance with paragraphs (b) (1) through (3) of this section, grant an exemption from the requirements of this subpart. An exemption may be withdrawn in accordance with paragraph (b)(4) of this section.

(1) *Requesting an exemption.* A request for an exemption must be submitted to the Agency, and must be accompanied by two copies of the following information:

- (i) The name, address, and telephone number of the requester;
- (ii) The name and registration number (or file symbol) of the product(s) for which the exemption is requested;
- (iii) A description of the package and the size(s) for which the exemption is requested; and
- (iv) Documentation supporting the request for exemption, including the length of time for which the exemption is requested.

(2) *Exemption based upon lack of toxicity.* The Agency may grant an exemption from the requirements of this subpart if the registrant or applicant demonstrates to the Agency's satisfaction that the hazards indicated by the toxicity criteria in § 157.22(a) are not indicative of the hazards to man. If granted, an exemption shall apply to other products of substantially similar composition. A notice will be issued in the FEDERAL REGISTER stating the nature of and reasons for the exemption.

(3) *Exemption based upon technical factors.* The Agency may grant an exemption from the requirements of this subpart based upon technical considerations. If granted, the exemption will be for a specified length of time, and will apply to other products of substantially similar composition and intended uses. A notice of the granting of

an exemption will be issued in the FEDERAL REGISTER. In considering whether to grant an exemption, the Agency will consider, among other things, the following:

(i) Whether the toxicity of the product is such that it should not be allowed to be distributed or sold except in child-resistant packaging.

(ii) Whether child-resistant packaging is technically feasible, practicable, or appropriate. An exemption may be granted if the Agency determines that any one of these criteria has not been met.

(iii) Whether the composition or use pattern of the product necessitates a particular form of packaging for proper use.

(iv) Whether child-resistant packaging that is technically feasible, practicable, and appropriate is available for the product or can reasonably be made available to the registrant in sufficient quantities to meet his packaging needs. This determination does not include a consideration of whether the packaging would be adaptable to a registrant's existing package type or packaging equipment.

(v) Whether the registrant has made a timely and good faith effort to obtain child-resistant packaging for the product.

(vi) If child-resistant packaging which is technically feasible, practicable, and appropriate is not yet available, when such packaging is likely to be available.

(4) An exemption may be withdrawn by the Agency at any time if the lack of child-resistant packaging results in serious illnesses or injuries to children. If the Agency determines that an exemption should be withdrawn, it will notify the registrant, stating the basis for its determination. The registrant will then have 30 days to request a hearing on the Agency's determination. Thereafter the Agency will decide whether to withdraw the exemption, and will notify the registrant of its decision.

#### § 157.27 Unit packaging.

Pesticide products distributed or sold as an aggregate of one or more unit packages and meeting the criteria of § 157.22 must be distributed or sold in