

Background Information

Claims about the Absence of an Ingredient

On 10/14/21 EPA added the following question and answer to EPA's Labeling Questions & Answers website¹

Can a manufacturer advertise that their product does not contain a certain active ingredient (e.g., "DEET free")? LC21-1208

Claims such as "free of [active ingredient]" or "contains no [active ingredient]" may constitute misbranding and may need to be removed. Consumers can readily determine if a pesticide product contains an active ingredient (e.g., DEET) by reviewing the ingredients listed on the label. Because all ingredients must be listed, the absence of an ingredient in the ingredient statement would indicate it is not in the product. Misleading comparative claims about the safety of the product versus other products constitute misbranding under 40 CFR 156.10(a)(5)(iv) and (vii). These claims are therefore disallowable under FIFRA sections 2(q)(1)(A) and 12(a)(1)(E).

Consumers can readily determine if a pesticide product contains an active ingredient (e.g., DEET) by reviewing the active ingredients listed on the front panel of the label in accordance with 40 CFR 156.10(g). Because all active ingredients must be listed, the absence of an active ingredient in the ingredient statement would indicate it is not in the product.

EPA Minimum Risk Condition 6²

The label cannot include any false or misleading statements, as described in 40 CFR 156.10(a)(5)(i) through (viii).

40 CFR 156.10(a)(5)(i) through (viii)

(5) False or misleading statements. Pursuant to section 2(q)(1)(A) of the Act, a pesticide or a device declared subject to the Act pursuant to § 152.500, is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

- (i) A false or misleading statement concerning the composition of the product;
- (ii) A false or misleading statement concerning the effectiveness of the product as a pesticide or device;
- (iii) A false or misleading statement about the value of the product for purposes other than as a pesticide or device;
- (iv) A false or misleading comparison with other pesticides or devices;
- (v) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government;
- (vi) The name of a pesticide which contains two or more principal active ingredients if the name suggests one or more but not all such principal active ingredients even though the names of the other ingredients are stated elsewhere in the labeling;
- (vii) A true statement used in such a way as to give a false or misleading impression to the purchaser;
- (viii) Label disclaimers which negate or detract from labeling statements required under the Act and these regulations;

¹ EPA Pesticide Labeling Q&A: <https://www.epa.gov/pesticide-labels/pesticide-labeling-questions-answers>

² EPA Minimum Risk Conditions: <https://www.epa.gov/minimum-risk-pesticides/conditions-minimum-risk-pesticides#condition-6>

Chapter 12 of the Label Review Manual explains EPA's policy on claims about the absence of an ingredient on pesticide product labels:

Claims about the Absence of an Ingredient: Statements or claims that express the absence of certain ingredients may be misleading statements prohibited by 40 CFR 156.10 (a)(5). These claims are examples of a true statement used in such a way as to give a false or misleading impression to the purchaser. Even though a claim expressing the absence of an ingredient is true, it would generally be considered to be misleading because it falsely suggests to the purchaser that the product is less risky, better, or more desirable than a product containing the ingredient in question. Further, a product must not claim that it does not contain an ingredient if it never contained or was not likely to contain in the first place.

State Registered Products

State Lead Agencies (SLAs) may address currently registered products or pending products differently. SLAs also have different rules and regulations as to what would be considered a revised label and what would require a new registration. We recommend that you reach out to SLAs directly.

Questions & Answers

Q1: What if my product includes "DEET-Free" in the product name?

A1: Depends on the SLA, some states require new registrations for name changes.

Q2: What if we don't change our labeling, advertising, or website to remove the claims?

A2: Different enforcement actions may occur - possible outcomes may include Stop Sale orders, cancellation of state registration, referral to EPA offices for enforcement action.

Q3: Aside from "DEET-Free" what are some other examples of non-compliant claims?

A3: Some examples include, but are not limited to:

- "as efficient as [chemical name]"
- "free from [chemical name]"
- "[chemical name]-free"
- "does not include [chemical name]"

³ EPA Label Review Manual: <https://www.epa.gov/pesticide-registration/label-review-manual>