

25(b) Pesticide - Claims Guidance

INTRODUCTION

Per FIFRA Section 25(b), U.S. EPA (EPA) has exempted certain products from federal regulation. However, these products are subject to registration by most states. States are not required to permit the sale of an exempted product simply because it is exempted under federal pesticide law. Each state may have different label requirements, which makes it difficult for companies to comply with all states. For this reason, the Association of American Pesticide Control Officials (AAPCO) created a 25(b) Workgroup. The following claims guidance was assembled by the AAPCO 25(b) Workgroup to help companies comply with state requirements. This list is for guidance purposes and does not guarantee that your product will be accepted in all states.

All claims on the manufacturer's website and marketing materials must comply with EPA's six conditions. For ease of state registrations, it is recommended that all claims also comply with the AAPCO 25(b) workgroup guidance documents as well. Advertising and collateral literature or verbal claims for the product must not substantially differ from any claims made on the label or labeling. Labeling means all labels and other written, printed, or graphic matter referencing the pesticide or device or upon any of its containers or wrappers or accompanying the pesticide or device at any time. In other words, if a claim is not on the label or substantially differs from what appears on the label (or any part of its distribution or sale which for example appears on a brochure), it cannot be made in advertising.

This guidance is effective 18 months from the Publication Date, any renewals for existing products within this period should not be impacted. Any existing inventory released for shipment before the Effective Date should not be impacted. Any existing products revised to make new absence of ingredient claims or any new product initiated by registrant before the Effective Date are not required to follow this revised guidance document but is highly encouraged. Any new product initiated by registrant after the Effective Date should follow this guidance document. In areas where this guidance conflicts with state laws & regulations, state laws & regulations must be followed. For specific registration requirements or info on data collected on products not covered in this document, please contact the individual state regulatory agency responsible for pesticide registration.

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.

However, on February 1, 2024, EPA updated this opinion to further state that "DEET-FREE" and similar claims may be appropriate when it is clear that they are NOT safety claims². The example given was that DEET is known to harm some fabrics. Therefore, "DEET-FREE" may be acceptable in the same manner as "BLEACH-FREE", in that the claim is not to imply safety, but instead is made for another reason. EPA determined that "DEET-FREE" claims can be made, but they must be qualified that they are not safety claims.

EPA's guidance document discusses some commonly requested "absence of an ingredient" claims. The guidance document from EPA³ is for all pesticide products – those that require registration with EPA (also known as Section 3 registrations) and those that are registration exempt (25(b) and devices).

- For "bleach-free" claims, EPA understands that a "bleach-free" claim is not generally viewed as a safety claim and thus not misleading on certain products because it can help users better understand that bleach is in a product to ensure they do not apply the product to items that bleach may damage (e.g., clothing).
- For "phosphate-free" claims, EPA would generally not consider those claims to be misleading when used on products because phosphates are considered as inert ingredients and have no pesticidal purpose. Since phosphate would typically be added to a formulation as an inert ingredient and would not typically be identified on the label, consumers would not usually be able to discern whether a product contains phosphate or is phosphate free without an explicit label claim. In addition, a declaration of phosphate content on product labels is consistent with EPA's initiative and actions taken by states and localities to combat nutrient pollution in U.S. waterbodies.
- For "DEET-free" claims⁴, EPA understands that there are reasons consumers want to have information about whether pesticide products contain DEET other than perceptions about its safety (e.g., odor and potential damage to plastic, rubber, vinyl, and elastic on items like clothing and backpacks). Under the guidance, EPA would generally not consider these specific claims to be false or misleading when accompanied by a qualifying statement like the following: "Not a safety claim." Thus, EPA will generally allow "absence of DEET"

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

² EPA Issues Guidance on "Absence of an Ingredient" Claims for Pesticide Products: <https://www.epa.gov/pesticides/epa-issues-guidance-absence-ingredient-claims-pesticide-products>

³ https://www.epa.gov/system/files/documents/2024-02/absence-of-an-ingredient-claims-guidance_02-2024_0.pdf

⁴ Absence of Ingredient Guidance III.D (pages 9-10)

claims to be used on the labeling of EPA-registered repellents that are applied to human skin and clothing for insects or ticks, as long as they are qualified to ensure that consumers are not misled about the safety of the product for humans or the environment relative to other products that contain DEET.

- **III.A of guidance (page 6) states:**

- “In conclusion, EPA reviews “absence of an ingredient” claims on pesticide product labeling on a case-by-case basis, based on FIFRA and its implementing regulations and, as appropriate, guided by the principles above.”

Other absence of ingredient claims may also be made, if the claim is not a safety claim. To make these claims, the registrant must be able to show a reason (based on data), other than safety, that this claim may be made. That reason should be identified on the label (e.g. “not a safety claim” or “will not harm fabrics”). The absence of ingredient may not claim it is free of ingredients that would never be in the product (e.g. “glyphosate free” on an insect repellent).

“Absence of” claims that may also be acceptable

- Fragrance free
- BPA-free packaging

While certain certifications may also imply the absence of certain ingredients without specifying any ingredients, such as OMRI, Certified Organic, and Non-GMO Project, these certifications are acceptable to be put on 25b labels. Other certifications, such as “Certified Glyphosate Free by The Detox Project” would still be considered false/misleading because they are specifying a particular ingredient and implying a safety claim.

Unacceptable Claims

The following claims are examples of unacceptable claims because they are implied safety claims and have been identified as false or misleading.

- “free from [chemical name]” (if not qualified)
- “[chemical name]-free” (if not qualified)
- “does not include [chemical name]” (if not qualified)
- “No harsh chemicals”
- Safe alternative to harsh chemicals; without harsh chemicals
- Comparative claims included within the background of a product line (ie – conventional pesticide causing sickness)

EPA Label Review Manual⁵

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

⁵ EPA Label Review Manual: <https://www.epa.gov/pesticide-registration/label-review-manual>

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[chemical]-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. Enforcement actions would vary from state to state.

Q3: Aside from “[chemical]--Free” what are some other examples of non-compliant claims?

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

- “as efficient as [chemical name]” (if not qualified)
- “free from [chemical name]” (if not qualified)
- “[chemical name]-free”
- “does not include [chemical name]” (if not qualified)
- “No harsh chemicals”
- Safe alternative to harsh chemicals; without harsh chemicals
- Comparative claims included within the background of a product line (ie – conventional pesticide causing sickness)

EPA Minimum Risk Condition 6⁶

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;

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

- (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;