

Chapter 2

Pesticide Product Labeling Interpretations

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Section 2.1

Conflict with Labeling Exemptions (2ee)

Interprets FAC section 12973; 3 CCR section 6000

Interpretation Conflict with labeling means any deviation from instructions, requirements, or prohibitions of registered labeling concerning storage, handling, or use except those outlined below. The definition of “conflict” is consistent with the definition of “inconsistent” as used in FIFRA section 2(ee). The following exceptions do not apply to section 18 emergency exemptions (see Section 5.2 for discussion).

Decrease in dosage rate per unit treated The amount of pesticide (active ingredient) applied per acre or other unit treated may be decreased as long as the label does not prohibit a decreased rate.

The labeling of many public health pesticides (antimicrobials) prohibit decreasing the dosage to ensure efficiency and manage resistance.

16 CCR section 1991(b) prohibits decreasing the dosage below product labeling rates for preconstruction pest control treatments.

Decrease in concentration of the mixture applied The dilution rate and total volume of diluent applied per acre may be increased (concentration decreased) as long as the total amount of pesticide applied per acre or unit does not exceed the labeling dosage rate. However, the total volume diluent per acre or unit cannot be decreased below that allowed in labeling even if the label dosage rate is not increased.

Application at a frequency less than specified A pesticide may be applied less often than indicated in labeling.

Target pest not listed Use to control a **target pest not listed** in labeling, provided the application is to a commodity or site listed in labeling and the use of the product against an unnamed pest is not expressly prohibited.

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Conflict with Labeling Exemptions (2ee), Continued

Method of application not prohibited

Employing a **method of application** not prohibited, provided other labeling directions are followed:

Usually when a pesticide label specifies a volume in excess of 20 gallons per acre, the primary method of application is interpreted to be by ground. If the volume per acre specification is 20 gallons or less, it may be assumed the pesticide can effectively be applied by aircraft.

Applicators may use a method of application not indicated on a pesticide label; however, the method employed must be consistent with dosage rate, volume of diluent and concentration directions as well as with precautionary statements. This exemption is often restricted by soil incorporation and chemigation requirements.

Pesticides can be applied through irrigation systems (chemigation) only when labeling gives specific directions for chemigation application. **No pesticide may be applied by sprinkler or other irrigation systems unless “sprinkler” or “sprinkler irrigation system” or a similar statement, is specified in the pesticide labeling.** Most irrigation systems are not properly engineered for pesticide application and would require modification in order to provide proper coverage and prevent contamination of nontarget areas. Most pesticides are formulated for application by methods other than irrigation and may require levels of agitation which are difficult or impossible to maintain during application by irrigation systems. Excess irrigation water treated with pesticides must not be allowed to contaminate any water supply, and runoff to adjacent properties must be prevented.

Generally, when a pesticide is applied through a thermal fogger, it is used without dilution. This means that pesticide products with labeling directions requiring dilution are not compatible with this method of application. Thermal fogging is a "space spray" type of treatment and issues of registration and tolerances on any crop or commodity present must be considered.

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Conflict with Labeling Exemptions (2ee), Continued

Method of application not prohibited
(continued)

The rate of application for a pesticide may be adjusted for use with a thermal fogger under the following conditions:

- The labeling does not prohibit this method of application.
- All labeling directions and precautions are complied with, including dilution rates.
- The pesticide has the site or crop listed on the label.
- There is an adequate method to determine the rate adjustment does not result in an increase.

Additionally, a method which is inherently hazardous would constitute a violation of *3 CCR section 6600* (e.g., "...Perform all pest control work in a careful and effective manner...").

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Conflict with Labeling Exemptions (2ee), Continued

Mixing with another pesticide or with a fertilizer

This exemption (commonly referred to as “tank mixing”) allows the addition of other pesticides or fertilizers to a pesticide mixture. It does not allow the addition of unregistered substances, such as sugar or vegetable oil, which are added to enhance the efficacy of the mixture. Any substance which is added to a pesticide to enhance the efficacy of a pesticide is defined in *FAC section 12758* as a spray adjuvant and must be registered in California as a pesticide, although the U.S. EPA does not consider spray adjuvants to be pesticides.

Pesticide products may be combined for application when:

- None of the products' labels prohibit such combination;
- The commodity or site is included on each label;
- The dosage rate for each product is not exceeded; and
- The dilution rate on each label is not decreased.

Pesticide product combinations may affect efficacy, human or environmental hazards, phytotoxicity, residue remaining at harvest, and the choice of application methods. The person recommending the use of pesticide product combinations must accept responsibility for any problems that develop. The pesticide registrants may not accept responsibility since they did not include the combination in the labeling of their products.

As a general rule, where the labeling of pesticides to be applied simultaneously have differing (inconsistent) requirements, the handling is to be done following the most restrictive (or most protective) requirement. This rule is found throughout FIFRA (see 40 CFR part 170.112(a)(3) with respect to entry restrictions) and is reflected in pesticide labeling as well.

Mixing with other substances

Some substances other than pesticides or fertilizers are generally allowed in tank mixes. They include deodorizers (such as Oil of Wintergreen), marking dyes, drift control materials, and warning agents (such as low levels of chloropicrin). Since these products are not added to affect the performance of the pesticide itself but to assist the application they are not considered spray adjuvants.

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Conflict with Labeling Exemptions (2ee), Continued

Increase in the concentration of the mixture

An **increase in the concentration** of the mixture applied may occur, provided it corresponds with the current published guidelines of the University of California.

The dilution ratio and volume of diluent applied per acre may be decreased (concentration increased), only when the application recommendation is included in an authorized, current, printed guideline of the University of California Cooperative Extension for the particular formulation to be used. This does not include newsletters or guidelines issued by individual local farm advisers. The crop to be treated must be included, and the per-acre dosage shall not exceed that shown in pesticide labeling.

PPE exceptions and substitutions allowed by section 6738

3 CCR section 6738 provides for exceptions and substitutions from labeling-required PPE and for the use of engineering controls, rather than labeling PPE. All of the provisions of section 6738 apply to both labeling and regulation requirements. This provision is specifically mentioned in the definition of "conflict with labeling" (as exceptions) found in section 6000.

Section 2.2

Pesticide Use Practices that Create Conflict with Labeling

Simultaneous use of two products with conflicting labeling statements

Occasionally, a situation arises where an applicator wants to simultaneously use two products with conflicting (as opposed to inconsistent) labeling statements.

In these cases the instructions cannot be reconciled to allow the applicator to follow the most protective requirement. For example, if one product labeling states: "**Do not wear** (emphasis added) jewelry, gloves, goggles, tight clothing, rubber protective clothing, or rubber boots when handling" and the other product labeling states: "Handlers performing direct-contact tasks **must wear** (emphasis added) ... chemical-resistant gloves, chemical-resistant footwear, face-sealing goggles..." a situation is created where a user cannot comply with both labeling requirements when mixing and using the two pesticides. This situation creates an express prohibition and simultaneous use of these two products puts applicators at risk for violating FAC section 12973.

If registrants seek to market products to be used simultaneously, they must address this issue and submit labeling amendments with current data supporting the requested change(s) for use of appropriate personal protective equipment.

Illegal mixing of two pesticides with the same AI to increase dosage

The practice of increasing the dosage rate ("doubling the dose") of an application by "tank mixing" two separate pesticide products containing the same active ingredient (AI) is a use in conflict with that labeling and a violation FAC section 12973. For example, an analysis of the tank mix would indicate there is a higher rate of AI than allowed by the registered labeling delivered with either product (an overdose). That overdose would constitute a use in conflict with the registered labeling and, therefore, is a violation of FAC section 12973. Similarly, the sequential application of multiple products containing the same AI to exceed the amount allowed in a time interval (see definition of *growing season* in Chapter 4) by the registered labeling would constitute a use in conflict.

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Pesticide Use Practices that Create Conflict with Labeling, Continued

Illegal mixing of two pesticides with the same AI to increase dosage (continued)

3 CCR section 6000 defines "conflict with labeling" as any deviation from instructions, requirements, or prohibitions of the pesticide product labeling concerning storage, handling, or use with certain exceptions. Generally, tank mixing is allowed under the definition of conflict with labeling when neither product label prohibits such practice. However, the definition of conflict with labeling has never been interpreted as allowing nor is it intended to allow an increase in the maximum dose shown in pesticide labeling. DPR has no intention of accepting such an interpretation.

DPR is concerned that potential serious problems may result from this type of practice. For example, there would be an increased likelihood of pesticide residue in excess of the established tolerance for the treated crop; there would be the increased likelihood of pesticide residue or pesticide residues in excess of the established tolerance for adjacent crops (caused by pesticide drift); and there is an increased likelihood of illness to field workers exposed to excessive levels of pesticide residue on the treated crop(s).

Licensed Agricultural Pest Control Advisers should be made aware that repeated recommendation of a tank mix of two products to exceed the maximum dose is unprofessional conduct as defined by FAC section 12023.5(a) and a violation of FAC section 12023(f). Violations of the above-listed sections could result in a sanction against their license. DPR is advising CACs to take additional action against the county registration (suspension or revocation) of any adviser found to be performing this unprofessional practice pursuant to FAC section 12035.

Arguably, this practice also violates the intention of 3 CCR sections 6600(b) and 6600(e) respectively. When the result of this "tank mixing" practice exceeds the maximum allowable rate of active ingredient, pest control is not being performed in a careful and effective manner, and the adviser is not exercising reasonable precautions to avoid contamination of the environment. This practice is also inconsistent with FAC sections 11501(a) and 11501(b), which outline the purposes of the requirements and states in pertinent part, "To provide for the proper, safe and efficient use of pesticides essential for production of food and fiber and for protection of the public health and safety; and, to protect the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of these pesticides."

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Pesticide Use Practices that Create Conflict with Labeling,

Continued

Vegetable oils used in pesticide mix

Adjuvants

Applicators may use vegetable oils with a pesticide in an attempt to increase the efficiency of their operations as spray adjuvants and as diluents in the following situations:

There are vegetable oil products registered for use as spray adjuvants. These products may be used according to their labeling directions with pesticides that do not, by their own labeling, prohibit their use. This use is, in effect, a tank mix of two or more registered products. Vegetable oil products which are not registered may not be used as spray adjuvants. Their use would be a violation of *FAC section 12995*.

Diluents

Oil may be used as a diluent if the pesticide product labeling has directions for dilution with oil. When the labeling specifies a substance as the product's diluent, the use of any other substance as a diluent is considered a use in conflict with the labeling. In instances where no diluent is specified, water is considered the default material and must be used. If the labeling requires use of the product undiluted, then no diluent may be added.

Section 2.3

Label and Labeling Definitions

Interprets United States Code (U.S.C.) section 136(p)

Interpretation The terms “label” and “labeling” may not be used interchangeably, they have different scopes and meanings. Pesticide labeling includes the actual label attached to the pesticide container, any supplemental information accompanying the pesticide container, any manuals referenced on the label, any appropriate Section 24(c) Special Local Need labeling, and any appropriate Section 18 Emergency Exemption documentation. The pesticide label is limited to the document (including printed or embossed) that is actually attached to the container.

FIFRA definitions FIFRA definitions:

(p) Label and Labeling

(1) Label -- The term label means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(2) Labeling -- The term labeling means all labels and all other written, printed, or graphic matter:

- (a) accompanying the pesticide or device at any time; or
 - (b) to which reference is made on the label or in literature accompanying the pesticide or device, except current official publications (of specified federal or State institutions or agencies).
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Material Safety Data Sheet status as labeling A reference to the Material Safety Data Sheet (MSDS) is often found on the pesticide label. However, U.S. EPA, in PR Notice 92-4, has issued a determination that it does not intend to review MSDSs and will not treat them as labeling as long as nothing in the MSDS conflicts with what is in other labeling for the product or labeling requirements in 40 CFR part 156, Labeling Requirements.

Section 2.4

Labeling Interpretations (DPR Procedures)

Interprets FAC section 12973; 3 CCR section 6000

Interpretation CAC staff is encouraged to make an effort to interpret pesticide labeling using the guidelines contained in this manual.

Please submit unresolved questions in writing to your Enforcement Branch Liaison. Questions should be submitted with all relevant information and documentation including the labeling, and reference to laws, regulations, or this manual. Include your proposed response and discuss any problems created by the interpretation.

The Enforcement Branch Liaison and the Regional Office Supervisor will review this information to determine if the question has already been addressed by existing interpretations. The Regional Office will provide the CAC with a written response to a written question covered by existing interpretations.

A question not covered by an existing interpretation will be forwarded with supporting information to Enforcement Branch headquarters staff who will prepare a response to address the issue.

Section 2.5

Labeling Statements

About this section This section contains two parts: Labeling Statements--Mandatory vs. Advisory and Labeling Statements, Site Listing--Inclusive vs. Exclusive.

A. Labeling Statements--Mandatory vs. Advisory **Interprets FAC section 12973; 3 CCR section 6000**

Introduction Labeling statements can be divided into two general groups based upon their semantic structure--those that are mandatory and those that are advisory.

Mandatory statements Mandatory statements address how the product must be used or handled. Examples are: “wear a respirator;” “mix one quart per ten gallons;” “keep away from heat or open flame;” “do not contaminate water;” or “do not make more than two applications per season.”

Mandatory statements are conditions of use and generally must be followed or a violation of *FAC section 12973* (conflict with labeling) occurs. The definition of conflict with labeling can be found in *3 CCR section 6000*.

Advisory statements Provide facts or information about the product such as: “contents - five gallons;” “flammable mixture;” “this product is toxic to fish;” or “frequent applications may cause the appearance of visible spray residues on foliage.” Labeling statements preceded by terms such as, “it is recommended,” “users should” or “for best results” are also considered advisory statements.

Information about health or environmental hazards included in the labeling can be used as evidence that the user (or adviser) knew or should have known about the hazard. If necessary precautions were not taken, this can be used to support enforcement action based on negligent operation. However, advisory labeling statements do not create a specific enforceable obligation upon the user.

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Labeling Statements, Continued

B. Labeling Statements, Site Listing--Inclusive vs. Exclusive Interprets FAC section 12973; 3 CCR section 6000

Interpretation Generally, it is unlawful to use a pesticide on a site not listed under *Directions for Use* on the labeling. If the labeling statement is structured to indicate that the list is exclusive (i.e., “deciduous orchards,” apples and pears,” or “product may be used on Citrus [oranges, grapefruit, lemons]”), use of the pesticide is restricted to these sites, and only those commodities or sites can be legally treated.

DPR acknowledges there are occasions when the labeling cannot be considered exclusive. When the list is preceded by wording that suggests that what follows are examples only, by using “such as”, “etc.” or “including”, the product can legally be used on other species covered by the general term. For example, if the labeling states “deciduous fruit such as apples, peaches, and pears,” the use of the product in deciduous fruit orchards other than apples, peaches and pears cannot be considered use in conflict with the labeling.

Some labeling, particularly rodenticides, may not indicate a specific site and any interpretation of application sites could be quite broad. DPR’s interpretation is supported by the U.S. EPA Label Review Manual (LRM) used to evaluate labeling submitted by registrants prior to approval of product registration. The LRM *Chapter 11: Directions for Use states (in part) under Site Groupings:*

- “If the use site is indicated by a broad crop grouping, such as “ornamentals,” the registrant should be instructed to specifically identify sites on which the product may be applied in the directions for use: “Ornamentals: Christmas tree plantings, conifer seed orchards, and rhododendrons.” In this example, the product user is restricted to using the product only on those three use sites. However, if a use site were indicated as “Non-cropland industrial sites, such as, airports, fence rows, roadsides, and associated rights-of-ways,” then the user could use the product on any place that would fall under the category as non-cropland industrial sites.”

The U.S. EPA Label Review Manual is available at:

<https://www.epa.gov/pesticide-registration/label-review-manual>

Section 2.6

Pesticide Products, Using for Non-pesticide Uses

Interprets FAC section 12973; 3 CCR section 6000

Interpretation Many materials have both pesticide and non-pesticide uses. When products with a specific active ingredient have been registered, those products cannot be used for any non-pesticide use that is not listed on the labeling. This issue has come up with sodium hypochlorite use as a bleach, chloropicrin use as a warning agent, sulfur and phosphorous as fertilizing materials, dibrom use in insect monitoring traps by CDFA and others, and sulfur dioxide (SO₂) use as a fermenting agent in the wine industry.

Once a product is registered as a pesticide you must follow the label. Any non-pesticide uses must also be listed to allow legal use. The alternative is to find a product that is not registered as a pesticide.

This issue has been discussed with U.S. EPA and they have concurred with this interpretation.
