

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

100 Cambridge Street, 9th Floor, Boston, MA 02114
www.mass.gov/agr



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GOVERNOR

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TO: Licensed Pesticide Applicators

FROM: Taryn LaScola, Massachusetts Department of Agricultural Resources

REGARDING: FIFRA Section 2(ee), Using a Pesticide Inconsistent with Label Directions

DATE: January 31, 2024

INTRODUCTION

The Massachusetts Department of Agricultural Resources, Pesticide Program (“MDAR”) is the regulatory authority who oversees the use of pesticides. Under [M.G.L.c. 132B, Section 6A](#), *No person shall use a registered pesticide in a manner that is inconsistent with its labeling or other restrictions imposed by the department*”. Additionally, as required by the Federal Fungicide Insecticide Rodenticide Act (“FIFRA”), the statement *“It is a violation of federal law to use this product in a manner inconsistent with its labeling”*. In some circumstances a pesticide product may be used inconsistent with the label directions. With the the rise of invasive species and limits on products used to control them, MDAR has been asked about the criteria in which one can use a pesticide inconsistent with the label directions. This notice is intended to clarify when a pesticide product may be used off-label.

2(ee) FIFRA

Section 2(ee) of FIFRA describes the circumstances in which a pesticide product may be used inconsistent with the label directions. MDAR follows Section 2(ee) of FIFRA when the following circumstances are met:

- Applying a pesticide at any dosage, concentration, or frequency less than specified on the label, unless specifically prohibited by the label. However, Section 2(ee) cannot be used to increase the dosage, concentration or frequency of an application, nor can it be used to decrease the preharvest interval.
- Applying a pesticide against any target pest not specified on the labeling as long as the site is identified on the label and there are no other label restrictions that would preclude use against the pest.
- Employing any method of application not prohibited by the labeling, unless the label states that the product may be applied only by the methods specified on the label. For example, a Section 2(ee) recommendation cannot add a method of application such as chemigation or aerial application if the label specifies only ground applications.
- Mixing a pesticide or pesticides with a fertilizer, when such a mixture is not prohibited by the labeling.

It should be noted that some pesticide labels are pest/rate specific, meaning that the label has a specific application/dilution rate for a specific pest. In this circumstance, Section 2(ee) would not apply. For example, if the label lists out specific diseases and rates associated with each disease and the disease that a person wants to treat for is not listed, then Section 2(ee) would not apply.

Additionally, it is important that the label be reviewed to ensure the product is intended for the industry that would like to use it. For example, if the product is labeled for agricultural uses, then it should not be used in the turf industry unless that use is on the label.

Some manufacturers develop additional supplemental labeling that are specifically designed to address Section 2(ee) and will list the new pest or rate. If that happens, then the supplemental labeling must accompany the product and is considered part of the label, and the directions must be followed.

If you have any questions regarding this notice or Section 2(ee) please contact me at:
taryn.lascola@mass.gov