

5/11/2023



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

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SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Supervisor, Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Salt Lake City, Utah 3303

Subject: Requested action to be taken regarding the SilverOnyx HEPA Filter for 5-Speed Units in the shipment with entry number 574-03921471 FIFRA-08-2023-0041

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the SilverOnyx HEPA Filter for 5-Speed Units in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. § 12.114. The product was inspected by Customs and Border Patrol Officers in Salt Lake City, Utah on May 9, 2023, and after consulting with EPA it was determined to be out of compliance.

The following information pertains to the shipment of the SilverOnyx HEPA Filter for 5-Speed Units:

- The importer and consignee is SilverOnyx LLC, 16171 S Bringham Boulevard, Bluffdale, Utah 84065-1929.
- The manufacturer is Foshanshunde Kaitao Import & Export, 2/F Number 18 North Ronggui Dadao Dongf Guoshunde, 528305 China.
- The broker is ACB Import Services, Inc. point of contact sschwanz@arizonacustomsbrokers.com.
- The file date was April 14, 2023.
- The bill number is ONEYSZPD29328300.
- The port of entry is Salt Lake City, Utah 3303.
- The country of origin is China.

Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines “device” as “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or

in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.” (See also 40 C.F.R. § 152.500(a)).

Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” as “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.”

Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers” and defines “labeling” in part, as “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....”

The product labeling for these units has the following language:

- “HEPA Filter”
- “It is a violation of Federal Law to use this product in a manner that is inconsistent with its labeling”
- “Filter for air purifier”
- “EPA Establishment Number 99350-UT-2”

These SilverOnyx HEPA Filter for 5-Speed Units are devices under FIFRA section 2(h), 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500(a) because they fall within the definition of “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest, [which includes virus, bacteria, or other micro-organism,] or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.”

The shipment that arrived at the border for import is in violation of FIFRA section 12(a)(2)(N), 7 U.S.C. § 136j(a)(2)(N), because a registrant, wholesaler, dealer, retailer, or other distributor failed to correctly file reports required by the Act. As required by 19 C.F.R. § 12.114, a Notice of Arrival of Pesticides and Devices, EPA form 3540-1, and a copy of one product label must be submitted.

The Agency hereby notifies U.S. Customs and Border Protection that this merchandise has been refused admission and recommends that this merchandise be re-exported or destroyed within 90 calendar days from the date of this Notice.

On May 10, 2023, the Customs and Border Patrol Cargo Team in Salt Lake City, Utah was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.