

7/28/2023



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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**SENT VIA ELECTRONIC MAIL**  
**DELIVERY RECEIPT REQUESTED**

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

**To:** U.S. Department of Homeland Security  
Bureau of Customs and Border Protection  
Sweetgrass, Montana 3310

**Subject:** Requested action to be taken regarding the Lightning Mosquito Killer FIFRA-08-2023-0060

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 Lightning Mosquito Killer 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. section 12.114. The shipment was inspected by a Consumer Safety Officer at the Sweetgrass, Montana Port of Entry on June 27, 2023, and was determined to be out of compliance.

The following information pertains to the shipment of the Lightning Mosquito Killer:

- The sender is AVI Group LLC located at 15300 Valley View Avenue Unit F16, La Mirada, California 90638-5228.
- The importer of record is Diane Preston located at 106 Terre Cotta Avenue, Branson, Missouri, 65616-7535.
- The shipper is Shree Shyam Enterprise INC. located at 3404 302 Skyview Ranch Drive Northeast, Calgary, Alberta T3N0P5, Canada, per the manifest.
- The carrier is USPS Facility located at 334 Church Street, Sweetgrass, Montana 59484.
- The shipment type is a Section 321 shipment.
- The file date was June 27, 2023.
- The quantity is one box with a total net weight of 10 oz.
- The port of entry is Sweetgrass, Montana 3310.
- The country of origin is China.

Section 12(a)(1)(F) of FIFRA, 7 U.S.C. 136j(a)(1)(F) provides that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

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....”

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)).

Under FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1), a device is misbranded and subject to enforcement action if, among other reasons:

- the labeling bears any statements, designs, or graphic representations that are false or misleading (see 40 CFR 156.10(a)(5) below);
- its packaging or wrapping does not conform to standards established pursuant to FIFRA section 25(c)(3) (as of 2010, such standards have yet to be established for devices);
- it is an imitation of, or is offered for sale under the name of another device;
- the label fails to bear the establishment number of the establishment where it was produced;
- any required information is not prominently displayed on the label;
- it lacks adequate directions for use; or
- it lacks an adequate warning or caution statement.

The Lightning Mosquito Killer in the shipment described above included the following language on its label or labeling:

- “Mosqulto [sic] killing”
- “mosquito repellent”
- “Lightning mosquito killer”

This language demonstrates that the Lightning Mosquito Killer unit is a device under FIFRA section 2(h), 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500(a) because it falls 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 Lightning Mosquito Killer unit does not bear the EPA Establishment Number of the establishment where it was produced, lacks adequate directions for use, and lacks an adequate caution or warning statement on the label. Therefore, this product is misbranded pursuant to FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1).

Because this product is misbranded pursuant to 7 U.S.C. § 136(q)(1), importing this product in the shipment referenced above is a violation of FIFRA section 12(a)(1)(F), 7 U.S.C. § 136j(a)(1)(F), as a distribution or sale of a misbranded device.

The shipment is also 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. section 12.114, a Notice of Arrival of Pesticides and Devices (NOA), EPA form 3540-1, and a copy of one product label must be submitted. No NOA was filed for this shipment. Therefore, this shipment that arrived at the border was also in violation of FIFRA section 12(a)(2)(N), 7 U.S.C. § 136j(a)(2)(N).

For these reasons, the product referenced above in the shipment cannot be allowed entry into the United States.

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.

Please contact Devin Donaldson, a FIFRA import inspector, by phone at (303) 312-6744 or by email at [donaldson.devin@epa.gov](mailto:donaldson.devin@epa.gov) if you have any questions concerning this matter.