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DENVER, CO 80202

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U.S. EPA REGION 8
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SENT BY EMAIL
DELIVERY RECEIPT REQUESTED

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

Cobb,
David

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by Cobb, David
Date: 2025.03.28
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To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Pembina, North Dakota 3401

Subject: Requested action to be taken regarding the products in Shipment ID 2XR4
78TT VHS FIFRA-08-2025-0030

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 (CBP) that the products 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 (FIFRA), 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. §12.114. On March 11, 2025, the EPA inspected this shipment and found the following:

- The product is DuoVac 196 DV Filters.
- The shipper is Vacuum Specialist, 3103 Centre Street NW, Calgary, Alberta T2E2X3, Canada.
- The importer was Katelyn Nelson, 36435 570th Avenue, New York Mills, Minnesota, 56567-8936.
- The broker was UPS Pembina North Dakota.
- The entry date was March 11, 2025.

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(e)(1) of this title.”

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(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....”

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 also 40 CFR 156.10(a)(5));
- its packaging or wrapping does not conform to standards established pursuant to FIFRA section 25(c)(3);
- 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 label for the DuoVac 196 DV Filters had the following language:

- “DuoVac Filters.”
- “3 Filtration Bags.”
- “www.duovac.com.”

The website, www.duovac.com, included the following language:

- “A Duovac central vacuum will remove dust, allergens and other pollutants away from the living area more efficiently than the competition brands or a regular

portable vacuum. The Duovac hybrid filtration system will remove 99.97 % of particles that have a size of 0.3 µm or larger.”

These statements demonstrate a pesticidal intent pursuant to the definitions above. Based on the information provided, the DuoVac 196 DV Filters in the shipment referenced above fall within the definition of devices under FIFRA section 2(h), 7 U.S.C. § 136(h), and 40 C.F.R § 152.500(a) as “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 DuoVac 196 DV Filters in the shipment referenced above are misbranded pursuant to FIFRA section 2(q)(1), 7 U.S.C. § 136(q)(1) because the labels bear no EPA Establishment Number. Accordingly, based on the information provided, importing the products 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 that arrived at the border for import 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. § 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. Therefore, these pesticide products in the shipment referenced above should not be allowed entry into the United States.

The EPA hereby notifies CBP that this merchandise should be refused admission pursuant to the authority of FIFRA § 17(c), 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. § 12.114. The importer should export this merchandise or dispose of the products under supervision of the CBP within ninety calendar days from the date of this memorandum or within such additional time as the District Director of CBP specifies. Failure to do so may result in either the destruction of the merchandise as authorized by FIFRA or in any action necessary to enforce the terms of any bond under which the shipment has been released to the consignee. Alternatively, CBP may elect to seize the products as a prohibited importation pursuant to their authorities as set out at 19 U.S.C. § 1595a(c)(2)(A).

On March 13, 2025, the EPA informed the CBP Cargo Chief in Pembina, North Dakota, that it would deny entry of this shipment. Please contact Christine Tokarz, the import enforcement coordinator, by email at tokarz.christine@epa.gov, if you have any questions concerning this matter.