



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 BY ELECTRONIC MAIL**  
**DELIVERY RECEIPT REQUESTED**

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

To: U.S. Department of Homeland Security  
Bureau of Customs and Border Protection  
Portal, North Dakota POE 3403

Subject: Requested action to be taken regarding the Regalia Maxx Biofungicide in shipment with entry number 420- 40249478 FIFRA-08-2024-0012

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 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. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on January 31, 2024.

The following information pertains to the shipment:

- The consignee is and importer is Marrone Bio Innovations Inc. 1540 Drew Avenue, Davis, California 95618-6320.
- The broker is M.E.Dey & Company, Bryan Cruz, Bryan Cruz [BryanC@medey.com](mailto:BryanC@medey.com).
- The bill number is CNWY948605744.
- The entry date was January 26, 2024.
- The quantity is 36 cases, weighing 1,539 pounds.
- The port of entry is Portal, North Dakota 3401.
- The country of origin as entered in ACE is Canada.

The shipment that arrived at the border for import is in violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a.

Under FIFRA, a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. Section 2(u) of FIFRA, 7 U.S.C. § 136(u). (See also 40 C.F.R. § 152.15.)

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 label for Regalia Maxx Biofungicide has the following language:

- “Biofungicide Liquid Concentrate”

This claim demonstrates a pesticidal intent pursuant to the definitions above. The Regalia Maxx Biofungicide is thus a pesticide and subject to FIFRA regulation.

Regalia Maxx Biofungicide is not registered pursuant to section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, this is an unregistered pesticide. Importing these products in the shipment referenced above is a violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), as a distribution or sale of unregistered pesticides.

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, none of the products referenced above in the shipment with entry number 420-40249478 should be allowed entry into the United States.

EPA therefore hereby notifies Customs and Border Protection 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 Customs and Border Protection within ninety (90) calendar days from the date of this memorandum or within such additional time as the District Director of Customs and Border Protection specifies. Failure to do so may result in either the destruction of the merchandise as authorized by the Act or in any action necessary to enforce the terms of any bond under which the shipment has been released to the consignee. Alternatively, Customs and Border Protection 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 January 31, 2024, the Customs and Border Protection Cargo Chief in Portal, North Dakota, was informed that the EPA 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](mailto:tokarz.christine@epa.gov) if you have any questions concerning this matter.