



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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DELIVERY RECEIPT REQUESTED

Date: March 30, 2023

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
Port of Sweetgrass, Montana 3310

Subject: Requested action to be taken regarding the Genics Inc Cobra Rod in shipment with entry number SCS-98586804 FIFRA-08-2023-0019

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 Genics Inc Cobra Rods 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 shipment was inspected by EPA Officers at the Sweetgrass, Montana Port of Entry on March 30, 2023, and determined to be out of compliance.

The following information pertains to the shipment of the Genics Inc Cobra Rod:

- The broker is UPS Supply Chain Solutions, 2150 Peace Portal Drive, Blaine, Washington 98230. Point of contact UPSNOB_PGA_Team@ups.com.
- The consignee is Fire Barrier Technologies, LLC, 1179 Stewart Road, Monroe, Georgia 30655.
- The importer and shipper is Genics Inc., 27717 Acheson Road, Acheson, Alberta T7X6B1, Canada.
- The contact for the broker is Sam Diaz, SAM.DIAZ@GENICSINC.COM.
- The entry number is SCS-98586804.
- The ship date was March 30, 2023.
- The product is 10 pails of Genics Inc Cobra Rod.
- The port of entry is Sweetgrass, Montana 3310.
- The country of origin is Canada.

Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide 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(q) of FIFRA, 7 U.S.C. § 136(q), states:

“(1) A pesticide is misbranded if—

- (A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
- (B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 136w(c)(3) of this title;
- (C) it is an imitation of, or is offered for sale under the name of, another pesticide;
- (D) its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced;
- (E) any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment;
- (G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment; or

(2) A pesticide is misbranded if—

- (A) the label does not bear an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if—

- (i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and
 - (ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;
- (B) the labeling does not contain a statement of the use classification under which the product is registered;
- (C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—
- (i) the name and address of the producer, registrant, or person for whom produced;
 - (ii) the name, brand, or trademark under which the pesticide is sold;
 - (iii) the net weight or measure of the content, except that the Administrator may permit reasonable variations;”

At the March 30, 2023, import inspection, the EPA Officers observed that the product in the shipment above was the registered pesticide Genics Inc Cobra Rod, EPA Registration Number 71653-2.

Upon review of the Genics Inc Cobra Rod product labels at the March 30, 2023, import inspection it was determined that:

- The CAS Number for copper hydroxide (20427-59-2) was not listed in the ingredient statement.
- The First Aid Section was missing the statement, “You may also contact [insert phone number 1-800-xxxxxxx] for emergency medical treatment information.”
- It did not have the name and address of the producer, registrant, or person for whom the pesticide was produced.
- It did not have the net weight or measure of the content of the pesticide.
- The Directions for Use did not include the statements:
 - “The loading should not be less than 2.0 oz of Boric Acid per cubic foot of wood.”
 - “Inspections can be carried out every 5-8 years for Industrial wood and every 8-10 years for commercial wood.”

These items listed above are required to be on the label pursuant to section 2(q) of FIFRA, 7 U.S.C. § 136(q), and the Master Label for Genics Inc Cobra Rod, EPA Registration Number 71653-2, that is registered with the EPA. Because the items listed above were missing, the pesticides in the import listed above are misbranded. Distribution or sale of a misbranded pesticide is a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

The shipment that arrived at the border for import was also in violation of FIFRA section 12(a)(2)(N), a registrant, wholesaler, dealer, retailer, or other distributor filed false documents required by the Act. As stated above, this product, Genics Inc Cobra Rod, is a registered pesticide, EPA Reg. No. 71653-2. Per 19 C.F.R. § 12.114, the required Notice of Arrival of Pesticides and Devices (Notice of Arrival), EPA Form 3540-1 was submitted with false information. The Notice of Arrival Form indicated that

there were 10 pails of Genics Inc Cobra Rod, weighing 28 pounds each, for a total weight of 280 pounds. The label that was submitted as part of the Notice of Arrival package information indicated that the pails weighed 18.6 pounds. Upon inspection it was determined that the actual products were labeled with two weights: 18.6 pounds and 23.6 pounds.

Therefore, this product cannot be allowed entry into the United States.

On March 30, 2023, the Customs and Border Patrol Cargo Team in Sweetgrass, Montana, 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.