Jewel H. Bronaugh, Ph. D.
Commissioner

COMMONWEALTH *of* VIRGINIA

Department of Agriculture and Consumer Services
Division of Consumer Protection
Office of Pesticide Services
P.O. Box 1163 Richmond, Virginia 23218
804/786-3798 · Fax 804/786-9149 · Hearing Impaired: 800/828-1120
www.vdacs.virginia.gov

April 28, 2020

Tawanda Maignan, Team Leader
Emergency Response Team
U.S. EPA Office of Pesticide Programs (7504P)
Document Processing Desk (EMEX)
Room S4900, One Potomac Yard
2777 Crystal Drive
Arlington, VA 22202

RE: 2020 Request to Re-certify Repeat FIFRA § 18 –Bifenthrin Use to Control Brown Marmorated Stink Bugs on Apples, Peaches and Nectarines.

Dear Ms. Maignan:

The Virginia Department of Agriculture and Consumer Services (VDACS), as lead agency for pesticide regulation in Virginia, hereby supports and requests the re-certification of the Specific Exemption under Section 18 of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) which permits use of bifenthrin to control brown marmorated stink bugs (BMSB) on apples, peaches and nectarines. We are requesting this action in accordance with 40 CFR 166.20 (b) (5). The exemption would be statewide in Virginia.

VDACS will, under the authority of the Virginia Pest Control Act and FIFRA, ensure that the use of these pesticides under this exemption is in compliance with all requirements specified by EPA in approving this re-certification request.

For reference, the original request was submitted as a regional request by the state of Maryland in 2012 and supported by VDACS. It was authorized for Virginia under File Symbol 12-VA-04 (apple), -05 (peach) and 06 (nectarine). Re-certification requests in subsequent years have been authorized as follows:

- 2013: EPA File Symbols 13-VA-01 (apple), -02 (peach) and -03 (nectarine)
- 2014: EPA File Symbols 14-VA-03 (apple), -04 (peach) and -05 (nectarine)

- 2015: EPA File Symbols 15-VA03 (apple), -04 (peach) and -05 (nectarine)
- 2016: EPA File Symbols 16-VA03 (apple), -04 (peach) and -05 (nectarine)
- 2017: EPA File Symbols 17-VA03 (apple), -04 (peach) and -05 (nectarine)
- 2018: EPA File Symbols 18-VA03 (apple), -04 (peach) and -05 (nectarine)
- 2019: EPA File Symbols 19-VA05 (apple), -06 (peach) and -07 (nectarine)

IR-4 submitted the petition for tolerance for bifentrin on pome and stone fruit in June 2016. According to Bhavita Borad, FMC, a decision on these uses was expected in September 2017, but the EPA has requested two separate extensions of the PRIA date as they continue with the registration review process for the active ingredient bifenthrin. The new PRIA date for the IR-4 submission is now September 25, 2020

Attached please find Virginia's completed *Emergency Exemption (Section 18) Streamlined Repeat Request form*, the 2019 Final Report, registrant support letters and proposed labels for the bifenthrin products covered under this exemption request. The labels will be updated with the correct date range and file symbols once approved.

Thank you for your attention to this matter. If you have any questions, please contact Marlene Larios by email at marlene.larios@vdacs.virginia.gov or by phone (804) 786-8934.

Sincerely,

Micah B Raub

Micah Raub
Program Supervisor, CRLT
Office of Pesticide Services

Enclosures

cc: Jewel H. Bronaugh, Ph. D., Commissioner
Larry Nichols, Division Director
Liza Fleeson Trossbach, Program Manager
Dr. Daniel Frank, VPI & SU
Marilyn (St. Fleur) Fragé, EPA Region III
Marlene B. Larios, Program Coordinator
Chris Bergh, VPI & SU
Tim Formella, FMC
Crystal Layton, UPL NA Inc.

Emergency Exemption (Section 18) Streamlined Repeat Request

The Virginia Department of Agriculture and Consumer Services (VDACS) requests a specific emergency exemption under the provisions of section 18 of the Federal Insecticide, Fungicide and Rodenticide Act, As amended, for use of bifenthrin, formulated as the products Brigade WSB (EPA Reg No 279-3108); and Bifenture EC (EPA Reg No 70506-227) and Bifenture 10DF (EPA Reg No 70506-57), on apples, peaches and nectarines to control Brown Marmorated Stink Bug, *Halyomorpha halys* (Stål) and incorporates by reference all information submitted in the initial application dated June 18, 2012 and in subsequent years (2013-2019).

This is the ninth year that VDACS has requested this use. VDACS asks that this specific exemption request be processed as eligible for a streamlined repeat request as allowed by 40 CFR 166.20 (b) (5).

Also in accordance with the regulations, VDACS hereby certifies the following:

1. X The emergency condition(s) described in the previously submitted emergency exemption application continues to exist.
2. X Except as expressly identified in the attached document, all information submitted in the previously submitted emergency exemption application is still accurate.
3. X The proposed conditions of use are identical to the conditions of use EPA approved previously for emergency exemptions under File Symbols 12-VA-04 (apple), -05 (peach) & -06(nectarine); 13-VA01 (apple), -02 (peach) and -03 (nectarine); 14-VA03 (apple), -04 peach and -05 (nectarine); 16-VA-03 (apple), -04(peach), and -05(nectarine); 17-VA03 (apple), -04 (peach) and -05 (nectarine); 18- VA-03 (apple), -04 (peach) and -05 (nectarine) and 19VA05 (apple), -06 (peach) -07 (nectarine).
4. X Any conditions or limitations on the eligibility for recertification identified in the previous notice of approval of the exemption have been satisficed (explanation attached).
5. X The applicant has not newly become aware of any alternative chemical or nonchemical practice that may offer a meaningful level of pest control.
6. X A final or interim report is attached for 2019 (File Symbols 19VA05,-06 and -07).

UPL NA Inc.
Crystal Layton
630 Freedom Business Center, Suite 402
King of Prussia, PA 19406
Phone: (229) 583-3006

March 13, 2020

Via e-mail

Marlene B. Larios
Program Supervisor
Office of Pesticide Services
Virginia Department of Agriculture and Consumer Services
Office of Pesticide Services
102 Governor Street, Room LL14
Richmond, VA 23219

marlene.larios@vdacs.virginia.gov
☎ 804-786-8934

RE: Section 18 Letter of Support for Bifenture EC and Bifenture 10DF Insecticides

Dear Ms. Larios,

UPL NA Inc. (UPL NA) fully supports the Section 18 emergency exemption for use of Bifenture EC and Bifenture 10DF Insecticides, containing the active ingredient bifenthrin for control of Brown Marmorated Stink Bug (*Halyomorpha halys*) on apples, peaches, and nectarines in Virginia (and other supporting States). The products we supply are:

- Bifenture EC – EPA Reg. No. 70506-57
- Bifenture 10DF – EPA Reg. No. 70506-227

UPL NA will be able to supply product to meet the market demand for 2020.

For the 2019 season, our records do not show any sales to Virginia for this use specifically. It is hard to determine if any product was sold for this use in Virginia since we sell through distribution and our distributors sell across the entire US. In addition, these products have many uses under their Section 3 registration for which applications may have been made. We do know that overall 144 gallons of the Bifenture EC and no Bifenture DF were sold in Virginia in 2019.

In 2016, IR-4 submitted a petition to establish a tolerance for bifenthrin on apples (group 11-10) and peaches and nectarines (subgroup 12-12B). This petition appears to be pending with EPA.

If you have any questions, please feel free to contact me directly at 229-583-3006 or crystal.layton@upl-ltd.com. If you have technical questions about the product and control of Brown Marmorated Stink Bug, please contact Paul Neese at 919-257-1825 or Paul.Neese@upl-ltd.com.

Thank you for your time and consideration.

Sincerely,

C Layton

Crystal Layton
Regulatory Manager

Cc: Paul Neese

RESTRICTED USE PESTICIDE

Toxic to fish and aquatic organisms.
For retail sale to and use only by certified applicators, or persons under their direct supervision, and only for the uses covered by the certified applicator's certification.

For distribution and use only in Virginia under an emergency exemption authorized under Section 18 of FIFRA

All applicable directions, restrictions, and precautions on the EPA registered product labels as well as those on these directions for use must be followed. These directions for use must be in the possession of the user at the time of pesticide application.

Inform the Virginia Department of Agriculture and Consumer Services immediately if any adverse effects resulting from the use of this pesticide in connection with these exemptions occur.

Products: Bifenture® EC Agricultural Insecticide (EPA Reg. No. 70506-57)
Bifenture® 10DF Insecticide/Miticide (EPA Reg. No. 70506-227)

Firm Name: UPL NA Inc.
630 Freedom Business Center, Suite 402
King of Prussia, PA 19406

Crop/Site/Commodity: Apples, Peaches, Nectarines

File Symbols: **XX-VA-05 (apple), XX-VA-06 (peach), XX-VA-07 (nectarine)**

Target Pest/Problem: Brown Marmorated Stink Bug (*Halyomorpha halys*)

Dosage: Apply 5.12 – 12.8 fl ozs (0.08-0.20 lbs ai) per acre of **Bifenture EC Agricultural Insecticide** (EPA Reg. No. 70506-57), **OR**

Apply 12.8 – 32.0 ozs (0.08-0.20 lbs ai) per acre of **Bifenture 10DF Insecticide/Miticide** (EPA Reg. No. 70506-227)

Use higher listed rates when crops are under heavy insect pressure.

Dilution Rate: **By Ground:** Apply as a dilute spray (minimum of 200 gallons of finished spray per acre) or concentrate (minimum of 50 gallons of finished spray per acre).
For best control, thorough coverage is necessary.

Frequency/Timing of Applications: Applications should be applied when populations reach locally determined economic thresholds. Consult the cooperative extension service, professional consultants or other qualified authorities to determine appropriate threshold levels for treatment in your area.

Do not apply more than 32 fl ozs (0.50 lbs ai) of **Bifenture EC Agricultural Insecticide** or 80 ozs (0.50 lbs ai) of **Bifenture 10DF Insecticide/Miticide** per acre per season.

Apply as necessary to maintain control using a minimum of 30-day spray intervals.
Do not apply this product until after petal fall.
Do not graze livestock in treated orchards or cut treated cover crops for feed.

Restrictions: This pesticide is extremely toxic to fish and aquatic invertebrates. Use with care when applying in areas adjacent to any body of water. Do not apply directly to water, to areas where surface water is present or to intertidal areas below the high mean water mark. Do not make applications when weather conditions favor drift from treated areas. Drift and runoff from treated areas may be hazardous to aquatic organisms in neighboring areas. Do not contaminate water when disposing of equipment wash waters.

This product is highly toxic to bees exposed directly to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds while bees are actively visiting the treatment area.

The use of bifenthrin is prohibited in areas that may result in exposure of endangered species to bifenthrin. Prior to use in a particular county contact the local extension service for procedures and precautions to use to protect endangered species.

Restricted Entry Interval (REI): 12 hours

Pre-Harvest Interval (PHI): 14 days

Restricted Use Pesticide: When used in Virginia, applications can only be made by certified applicators or by persons under their direct supervision and only for those uses covered by the certified applicators certification.

This exemption is effective _____ through _____.

FMC | An Agricultural Sciences Company

FMC Corporation
2929 Walnut Street
Philadelphia, PA 19104
USA

215.299.6000
fmc.com

March 09, 2020

Marlene Larios
Program Coordinator
Office of Pesticides
Product Registration, Business Licensing and Worker Protection Standard
Virginia Department of Agriculture and Consumer Services
102 Governor Street, Room LL14,
Richmond, VA 23219

RE: Section 18 Letter of Support

Dear Ms. Larios:

As the registrant for Brigade WSB insecticide/miticide (EPA Reg No. 279-3108), FMC fully supports the proposed renewal of a Section 18 emergency exemption use of this product in Virginia on apple, peach, and nectarine to control the Brown Marmorated Stink Bug (*Halyomorpha halys*).

FMC is committed to working with IR-4 in their program to obtain Section 3 registrations for use of bifenthrin on pome and stone fruit. IR-4 conducted field magnitude of the residue trials on apple (PR 11016) and peach (PR 11017) in 2013 and submitted tolerance petitions for these new uses to US EPA in June 2016. An Agency decision on these uses was expected in September 2017, but the EPA has requested two separate extensions of the PRIA date as they continue with the registration review process for the active ingredient bifenthrin. The new PRIA date for the IR-4 submission is now September 25, 2020.

Please contact me by telephone at 215-299-6140 or by email at bhavita.borad@fmc.com if you have any questions on this matter.

Sincerely,

Bhavita

Bhavita Borad
Registration Specialist
FMC Corporation

RESTRICTED USE PESTICIDE

Due to toxicity to fish and aquatic organisms.

For retail sale to and use only by certified applicators or persons under their direct supervision, and only for those uses covered by the certified applicator's certificate

BRIGADE® WSB

INSECTICIDE / MITICIDE

Section 18 EXEMPTION

FOR DISTRIBUTION AND USE ONLY IN VIRGINIA

EPA File Symbol:
20-VA- _____,
20-VA- _____,
20-VA- _____

EMERGENCY CALLS: 800-331-3148

ALL APPLICABLE DIRECTIONS, RESTRICTIONS, AND PRECAUTIONS ON THE REGISTERED PRODUCT LABEL FOR BRIGADE WSB (EPA REG. NO. 279-3108) ARE TO BE FOLLOWED

THESE DIRECTIONS FOR USE MUST BE IN THE POSSESSION OF THE USER AT THE TIME OF PESTICIDE APPLICATION.

This exemption is effective from , 2020 through , 2020

Crop	Pest Controlled	Rate of Application
Apples, Peaches, Nectarines	Brown marmorated stink bug	12.8 - 32 oz/A (0.08 - 0.2 lb ai/acre)

Directions for Use: Application must be made post-bloom, by ground only as a dilute (minimum of 200 gallons of finished spray per acre) or concentrate (minimum of 50 gallons of finished spray per acre) in sufficient water to provide thorough coverage. Do not apply this product until after petal fall. Thorough coverage is essential to achieve control. One bag = 0.05 lb ai = 8 oz formulated product.

Restrictions: Do not apply more than 32 oz/A (0.2 lb ai/A) per application. Do not apply more than 80 oz/A (0.5 lb ai/A) per year. Do not make applications less than 30 days apart. Do not graze livestock in treated areas. Do not apply within 14 days of harvest. Do not allow entry into treated areas for 12 hours following application.

Any adverse effects resulting from the use of Brigade WSB under this emergency exemption must be immediately reported to the Virginia Department of Agriculture & Consumer Services.

DR-4408 030920

FMC

FMC Corporation
2929 Walnut Street
Philadelphia, PA 19104

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