

Subsec. (a)(2)(Q), (R), (S). Pub. L. 100-532, §603(2)(D), added subpars. (Q), (R), and (S).

1978—Subsec. (a)(2)(F). Pub. L. 95-396 inserted proviso exempting from prohibition the sale, under regulations issued by the Administrator, of a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-532 effective on expiration of 60 days after Oct. 25, 1988, see section 901 of Pub. L. 100-532, set out as a note under section 136 of this title.

EFFECTIVE DATE

For effective date of section, see section 4 of Pub. L. 92-516, set out as a note under section 136 of this title.

**§ 136k. Stop sale, use, removal, and seizure**

**(a) Stop sale, etc., orders**

Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this subchapter, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Administrator may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

**(b) Seizure**

Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—

- (1) in the case of a pesticide—
  - (A) it is adulterated or misbranded;
  - (B) it is not registered pursuant to the provisions of section 136a of this title;
  - (C) its labeling fails to bear the information required by this subchapter;
  - (D) it is not colored or discolored and such coloring or discoloring is required under this subchapter; or
  - (E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;
- (2) in the case of a device, it is misbranded;

or

- (3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this subchapter and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment.

In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall

not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

**(c) Disposition after condemnation**

If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this subchapter or the laws of the jurisdiction in which it is sold. On payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the subchapter or the laws of any jurisdiction in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

**(d) Court costs, etc.**

When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

(June 25, 1947, ch. 125, §13, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 991; amended Pub. L. 100-532, title VIII, §801(h), Oct. 25, 1988, 102 Stat. 2682.)

PRIOR PROVISIONS

A prior section 13 of act June 25, 1947, was classified to section 135k of this title prior to amendment of act June 25, 1947, by Pub. L. 92-516.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-532, §801(h)(1), directed that sentence beginning "In the case of" be moved from par. (3) and become a full measure sentence after par. (3).

Subsec. (c). Pub. L. 100-532, §801(h)(2), substituted "sold. On" for "sold: *Provided*, That upon".

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**§ 136I. Penalties**

**(a) Civil penalties**

**(1) In general**

Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

**(2) Private applicator**

Any private applicator or other person not included in paragraph (1) who violates any

provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

### (3) Hearing

No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.

### (4) Determination of penalty

In determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Administrator finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Administrator may issue a warning in lieu of assessing a penalty.

### (5) References to Attorney General

In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

## (b) Criminal penalties

### (1) In general

(A) Any registrant, applicant for a registration, or producer who knowingly violates any provision of this subchapter shall be fined not more than \$50,000 or imprisoned for not more than 1 year, or both.

(B) Any commercial applicator of a restricted use pesticide, or any other person not described in subparagraph (A) who distributes or sells pesticides or devices, who knowingly violates any provision of this subchapter shall be fined not more than \$25,000 or imprisoned for not more than 1 year, or both.

### (2) Private applicator

Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this subchapter shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000, or imprisoned for not more than 30 days, or both.

### (3) Disclosure of information

Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the author-

ity of section 136a of this title, shall be fined not more than \$10,000, or imprisoned for not more than three years, or both.

### (4) Acts of officers, agents, etc.

When construing and enforcing the provisions of this subchapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

(June 25, 1947, ch. 125, §14, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 992; amended Pub. L. 95-396, §17, Sept. 30, 1978, 92 Stat. 832; Pub. L. 100-532, title VI, §604, Oct. 25, 1988, 102 Stat. 2678; Pub. L. 102-237, title X, §1006(a)(8), Dec. 13, 1991, 105 Stat. 1895.)

#### AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102-237 substituted “, except that” for “: *Provided*, That” and “uses” for “use”.

1988—Subsec. (b)(1). Pub. L. 100-532 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this subchapter shall be guilty of a misdemeanor and shall on conviction be fined not more than \$25,000, or imprisoned for not more than one year, or both.”

1978—Subsec. (a)(2). Pub. L. 95-396, §17(1), authorized assessment of a civil penalty of not more than \$500 for a first offense and not more than \$1,000 for each subsequent offense against any applicator providing a service of controlling pests for violations of this subchapter.

Subsec. (a)(3). Pub. L. 95-396, §17(2), struck out provision respecting certain considerations when determining amount of penalty, now covered in par. (4).

Subsec. (a)(4). Pub. L. 95-396, §17(4), reenacted second sentence of par. (3) as par. (4) and authorized Administrator to issue a warning in lieu of assessing a penalty. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 95-396, §17(3), redesignated former par. (4) as (5).

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## § 136m. Indemnities

### (a) General indemnification

#### (1) In general

Except as otherwise provided in this section, if—

(A) the Administrator notifies a registrant under section 136d(c)(1) of this title that the Administrator intends to suspend a registration or that an emergency order of suspension of a registration under section 136d(c)(3) of this title has been issued;

(B) the registration in question is suspended under section 136d(c) of this title, and thereafter is canceled under section 136d(b), 136d(d), or 136d(f) of this title; and

(C) any person who owned any quantity of the pesticide immediately before the notice