

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).

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.

§ 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

to the registrant under subparagraph (A) suffered losses by reason of suspension or cancellation of the registration;

the Administrator shall make an indemnity payment to the person.

(2) Exception

Paragraph (1) shall not apply if the Administrator finds that the person—

(A) had knowledge of facts that, in themselves, would have shown that the pesticide did not meet the requirements of section 136a(c)(5) of this title for registration; and

(B) continued thereafter to produce the pesticide without giving timely notice of such facts to the Administrator.

(3) Report

If the Administrator takes an action under paragraph (1) that requires the payment of indemnification, the Administrator shall report to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate on—

(A) the action taken that requires the payment of indemnification;

(B) the reasons for taking the action;

(C) the estimated cost of the payment; and

(D) a request for the appropriation of funds for the payment.

(4) Appropriation

The Administrator may not make a payment of indemnification under paragraph (1) unless a specific line item appropriation of funds has been made in advance for the payment.

(b) Indemnification of end users, dealers, and distributors

(1) End users

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, immediately before the notice to the registrant under subparagraph (A), owned any quantity of the pesticide for purposes of applying or using the pesticide as an end user, rather than for purposes of distributing or selling it or further processing it for distribution or sale, suffered a loss by reason of the suspension or cancellation of the pesticide;

the person shall be entitled to an indemnity payment under this subsection for such quantity of the pesticide.

(2) Dealers and distributors

(A) Any registrant, wholesaler, dealer, or other distributor (hereinafter in this paragraph referred to as a “seller”) of a registered pesticide who distributes or sells the pesticide

directly to any person not described as an end user in paragraph (1)(C) shall, with respect to any quantity of the pesticide that such person cannot use or resell as a result of the suspension or cancellation of the pesticide, reimburse such person for the cost of first acquiring the pesticide from the seller (other than the cost of transportation, if any), unless the seller provided to the person at the time of distribution or sale a notice, in writing, that the pesticide is not subject to reimbursement by the seller.

(B) If—

(i) 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;

(ii) 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;

(iii) any person who, immediately before the notice to the registrant under clause (i)—

(I) had not been notified in writing by the seller, as provided under subparagraph (A), that any quantity of the pesticide owned by such person is not subject to reimbursement by the seller in the event of suspension or cancellation of the pesticide; and

(II) owned any quantity of the pesticide for purposes of—

(aa) distributing or selling it; or

(bb) further processing it for distribution or sale directly to an end user;

suffered a loss by reason of the suspension or cancellation of the pesticide; and

(iv) the Administrator determines on the basis of a claim of loss submitted to the Administrator by the person, that the seller—

(I) did not provide the notice specified in subparagraph (A) to such person; and

(II) is and will continue to be unable to provide reimbursement to such person, as provided under subparagraph (A), for the loss referred to in clause (iii), as a result of the insolvency or bankruptcy of the seller and the seller’s resulting inability to provide such reimbursement;

the person shall be entitled to an indemnity payment under this subsection for such quantity of the pesticide.

(C) If an indemnity payment is made by the United States under this paragraph, the United States shall be subrogated to any right that would otherwise be held under this paragraph by a seller who is unable to make a reimbursement in accordance with this paragraph with regard to reimbursements that otherwise would have been made by the seller.

(3) Source

Any payment required to be made under paragraph (1) or (2) shall be made from the appropriation provided under section 1304 of title 31.

(4) Administrative settlement

An administrative settlement of a claim for such indemnity may be made in accordance

with the third paragraph of section 2414 of title 28 and shall be regarded as if it were made under that section for purposes of section 1304 of title 31.

(c) Amount of payment

(1) In general

The amount of an indemnity payment under subsection (a) or (b) of this section to any person shall be determined on the basis of the cost of the pesticide owned by the person (other than the cost of transportation, if any) immediately before the issuance of the notice to the registrant referred to in subsection (a)(1)(A), (b)(1)(A), or (b)(2)(B)(i) of this section, except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by the person immediately before the issuance of the notice.

(2) Special rule

Notwithstanding any other provision of this subchapter, the Administrator may provide a reasonable time for use or other disposal of the pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this section, proper adjustment shall be made for any pesticide used or otherwise disposed of by the owner.

(June 25, 1947, ch. 125, §15, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 993; amended Pub. L. 100-532, title V, §501(a), Oct. 25, 1988, 102 Stat. 2674.)

AMENDMENTS

1988—Pub. L. 100-532 amended section generally, in subsec. (a), substituting provisions relating to general indemnification for provisions relating to requirements for payment, adding subsec. (b), and redesignating provisions of former subsec. (b), with further amendment, as subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-532, title V, §501(a), Oct. 25, 1988, 102 Stat. 2674, provided that amendment made by Pub. L. 100-532 is effective 180 days after Oct. 25, 1988.

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.

INTERIM PAYMENTS

Pub. L. 100-532, title V, §501(b), Oct. 25, 1988, 102 Stat. 2676, provided that:

“(1) SOURCE.—Any obligation of the Administrator to pay an indemnity arising under section 15 [this section], as it existed prior to the effective date of the amendment made by this section [see Effective Date of 1988 Amendment note above], shall be made from the appropriation provided under section 1304 of title 31, United States Code.

“(2) ADMINISTRATIVE SETTLEMENT.—An administrative settlement of a claim for such indemnity may be made in accordance with the third paragraph of section 2414 of title 28, United States Code, and shall be regarded as if it were made under that section for purposes of section 1304 of title 31, United States Code.”

§ 136n. Administrative procedure; judicial review

(a) District court review

Except as otherwise provided in this subchapter, the refusal of the Administrator to can-

cel or suspend a registration or to change a classification not following a hearing and other final actions of the Administrator not committed to the discretion of the Administrator by law are judicially reviewable by the district courts of the United States.

(b) Review by court of appeals

In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any person who will be adversely affected by such order and who had been a party to the proceedings may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by the Administrator for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which the Administrator based the Administrator's order, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order.

(c) Jurisdiction of district courts

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this subchapter.

(d) Notice of judgments

The Administrator shall, by publication in such manner as the Administrator may prescribe, give notice of all judgments entered in actions instituted under the authority of this subchapter.

(June 25, 1947, ch. 125, §16, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 994; amended Pub. L. 98-620, title IV, §402(4)(C), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 100-532, title VIII, §801(i), Oct. 25, 1988, 102 Stat. 2682; Pub. L. 102-237, title X, §1006(b)(1), (2), (3)(P), Dec. 13, 1991, 105 Stat. 1895, 1896.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102-237, §1006(b)(1), (2), (3)(P), substituted “the Administrator” for “he” before “based”, “the Administrator’s” for “his”, and “the Administrator” for “him” after “designated by”.

Subsec. (d). Pub. L. 102-237, §1006(b)(1), substituted “the Administrator” for “he” before “may”.

1988—Subsec. (a). Pub. L. 100-532 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Except as is otherwise provided in this subchapter, Agency refusals to cancel or suspend registra-