

released for shipment, and samples of any containers or labeling for such pesticides or devices, or (B) any place where there is being held any pesticide the registration of which has been suspended or canceled for the purpose of determining compliance with section 136q of this title.

(2) Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, the officer or employee shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) Warrants

For purposes of enforcing the provisions of this subchapter and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this subchapter have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

(1) entry, inspection, and copying of records for purposes of this section or section 136f of this title;

(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide) or otherwise in violation of this subchapter and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

(3) the seizure of any pesticide or device which is in violation of this subchapter.

(c) Enforcement

(1) Certification of facts to Attorney General

The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this subchapter. If it shall appear from any such examination that they fail to comply with the requirements of this subchapter, the Administrator shall cause notice to be given to the person against whom criminal or civil proceedings are contemplated. Any person so notified shall be given an opportunity to present the person's

views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this subchapter have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 136l(b) of this title or a civil proceeding under section 136l(a) of this title, when the Administrator determines that such action will be sufficient to effectuate the purposes of this subchapter.

(2) Notice not required

The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

(3) Warning notices

Nothing in this subchapter shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this subchapter whenever the Administrator believes that the public interest will be adequately served by a suitable written notice of warning.

(June 25, 1947, ch. 125, §9, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 988; amended Pub. L. 100-532, title III, §302, Oct. 25, 1988, 102 Stat. 2669; Pub. L. 102-237, title X, §1006(b)(1), (3)(H), (I), Dec. 13, 1991, 105 Stat. 1895, 1896.)

PRIOR PROVISIONS

A prior section 9 of act June 25, 1947, was classified to section 135g of this title prior to amendment of act June 25, 1947, by Pub. L. 92-516.

AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102-237, §1006(b)(3)(H), substituted “the officer or employee” for “he” before “shall” in fourth sentence.

Subsec. (c)(1). Pub. L. 102-237, §1006(b)(3)(I), substituted “the person’s” for “his” in third sentence.

Subsec. (c)(3). Pub. L. 102-237, §1006(b)(1), substituted “the Administrator” for “he” before “believes”.

1988—Subsec. (a). Pub. L. 100-532, §302(a), substituted “(1) For purposes of” for “For purposes of”, inserted “of the Environmental Protection Agency or of any State”, substituted “at reasonable times (A)” for “at reasonable times,” added cl. (B), and substituted “(2) Before” for “Before”.

Subsec. (b)(1). Pub. L. 100-532, §302(b), amended par. (1) generally, substituting “entry, inspection, and copying of records for purposes of this section or section 136f of this title” for “entry for the purpose of this section”.

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.

§ 136h. Protection of trade secrets and other information

(a) In general

In submitting data required by this subchapter, the applicant may (1) clearly mark any

portions thereof which in the applicant's opinion are trade secrets or commercial or financial information and (2) submit such market material separately from other material required to be submitted under this subchapter.

(b) Disclosure

Notwithstanding any other provision of this subchapter and subject to the limitations in subsections (d) and (e) of this section, the Administrator shall not make public information which in the Administrator's judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this subchapter, information relating to formulas of products acquired by authorization of this subchapter may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

(c) Disputes

If the Administrator proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b), the Administrator shall notify the applicant or registrant, in writing, by certified mail. The Administrator shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate district court for a declaratory judgment as to whether such information is subject to protection under subsection (b).

(d) Limitations

(1) All information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism, shall be available for disclosure to the public. The use of such data for any registration purpose shall be governed by section 136a of this title. This paragraph does not authorize the disclosure of any information that—

(A) discloses manufacturing or quality control processes,

(B) discloses the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, or

(C) discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide,

unless the Administrator has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.

(2) Information concerning production, distribution, sale, or inventories of a pesticide that

is otherwise entitled to confidential treatment under subsection (b) of this section may be publicly disclosed in connection with a public proceeding to determine whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment, if the Administrator determines that such disclosure is necessary in the public interest.

(3) If the Administrator proposes to disclose information described in clause (A), (B), or (C) of paragraph (1) or in paragraph (2) of this subsection, the Administrator shall notify by certified mail the submitter of such information of the intent to release such information. The Administrator may not release such information, without the submitter's consent, until thirty days after the submitter has been furnished such notice. Where the Administrator finds that disclosure of information described in clause (A), (B), or (C) of paragraph (1) of this subsection is necessary to avoid or lessen an imminent and substantial risk of injury to the public health, the Administrator may set such shorter period of notice (but not less than ten days) and such method of notice as the Administrator finds appropriate. During such period the data submitter may institute an action in an appropriate district court to enjoin or limit the proposed disclosure. The court may enjoin disclosure, or limit the disclosure or the parties to whom disclosure shall be made, to the extent that—

(A) in the case of information described in clause (A), (B), or (C) of paragraph (1) of this subsection, the proposed disclosure is not required to protect against an unreasonable risk of injury to health or the environment; or

(B) in the case of information described in paragraph (2) of this subsection, the public interest in availability of the information in the public proceeding does not outweigh the interests in preserving the confidentiality of the information.

(e) Disclosure to contractors

Information otherwise protected from disclosure to the public under subsection (b) of this section may be disclosed to contractors with the United States and employees of such contractors if, in the opinion of the Administrator, such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States for the performance of work in connection with this subchapter and under such conditions as the Administrator may specify. The Administrator shall require as a condition to the disclosure of information under this subsection that the person receiving it take such security precautions respecting the information as the Administrator shall by regulation prescribe.

(f) Penalty for disclosure by Federal employees

(1) Any officer or employee of the United States or former officer or employee of the United States who, by virtue of such employment or official position, has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (b) of this section, and who, knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be

fined not more than \$10,000 or imprisoned for not more than one year, or both. Section 1905 of title 18 shall not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this subchapter. Nothing in this subchapter shall preempt any civil remedy under State or Federal law for wrongful disclosure of trade secrets.

(2) For the purposes of this section, any contractor with the United States who is furnished information as authorized by subsection (e) of this section, or any employee of any such contractor, shall be considered to be an employee of the United States.

(g) Disclosure to foreign and multinational pesticide producers

(1) The Administrator shall not knowingly disclose information submitted by an applicant or registrant under this subchapter to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States or to any other person who intends to deliver such data to such foreign or multinational business or entity unless the applicant or registrant has consented to such disclosure. The Administrator shall require an affirmation from any person who intends to inspect data that such person does not seek access to the data for purposes of delivering it or offering it for sale to any such business or entity or its agents or employees and will not purposefully deliver or negligently cause the data to be delivered to such business or entity or its agents or employees. Notwithstanding any other provision of this subsection, the Administrator may disclose information to any person in connection with a public proceeding under law or regulation, subject to restrictions on the availability of information contained elsewhere in this subchapter, which information is relevant to a determination by the Administrator with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment.

(2) The Administrator shall maintain records of the names of persons to whom data are disclosed under this subsection and the persons or organizations they represent and shall inform the applicant or registrant of the names and affiliations of such persons.

(3) Section 1001 of title 18 shall apply to any affirmation made under paragraph (1) of this subsection.

(June 25, 1947, ch. 125, §10, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 989; amended Pub. L. 95-396, §15, Sept. 30, 1978, 92 Stat. 829; Pub. L. 98-620, title IV, §402(4)(B), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 100-532, title VIII, §801(f), Oct. 25, 1988, 102 Stat. 2682; Pub. L. 102-237, title X, §1006(b)(1), (2), (3)(J), Dec. 13, 1991, 105 Stat. 1895, 1896.)

PRIOR PROVISIONS

A prior section 10 of act June 25, 1947, was classified to section 135h of this title prior to amendment of act June 25, 1947, by Pub. L. 92-516.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-237, §1006(b)(3)(J), substituted “the applicant’s” for “his”.

Subsec. (b). Pub. L. 102-237, §1006(b)(2), substituted “the Administrator’s” for “his”.

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

1988—Subsec. (d). Pub. L. 100-532 in par. (1), substituted “public. The use” for “public: *Provided*, That the use” and “title. This paragraph” for “title: *Provided further*, That this paragraph”, and in par. (3), “notice. Where” for “notice: *Provided*, That where”.

1984—Subsec. (d)(3). Pub. L. 98-620 struck out provisions requiring the court to give expedited consideration to actions involving injunctions or limitations of proposed disclosure.

1978—Subsec. (b). Pub. L. 95-396, §15(1), made disclosure of information by the Administrator subject to the limitations of subssecs. (d) and (e) of this section.

Subsecs. (d) to (g). Pub. L. 95-396, §15(2), added subssecs. (d) to (g).

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 OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

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.

§ 136i. Use of restricted use pesticides; applicators

(a) Certification procedure

(1) Federal certification

In any State for which a State plan for applicator certification has not been approved by the Administrator, the Administrator, in consultation with the Governor of such State, shall conduct a program for the certification of applicators of pesticides. Such program shall conform to the requirements imposed upon the States under the provisions of subsection (a)(2) of this section and shall not require private applicators to take any examination to establish competency in the use of pesticides. Prior to the implementation of the program, the Administrator shall publish in the Federal Register for review and comment a summary of the Federal plan for applicator certification and shall make generally available within the State copies of the plan. The Administrator shall hold public hearings at one or more locations within the State if so requested by the Governor of such State during the thirty days following publication of the Federal Register notice inviting comment on the Federal plan. The hearings shall be held within thirty days following receipt of the request from the Governor. In any State in which the Administrator conducts a certification program, the Administrator may require any person engaging in the commercial application, sale, offering for sale, holding for sale, or distribution of any pesticide one or more uses of which have been classified for restricted use to maintain such records and sub-