

ments of this subchapter, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this subchapter;

(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

(3) any public official while engaged in the performance of the official duties of the public official;

(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

(June 25, 1947, ch. 125, §12, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 989; amended Pub. L. 95-396, §16, Sept. 30, 1978, 92 Stat. 832; Pub. L. 100-532, title VI, §§601(b)(2), 603, title VIII, §801(g), (q)(2)(B), Oct. 25, 1988, 102 Stat. 2677, 2678, 2682, 2683; Pub. L. 102-237, title X, §1006(a)(7), (b)(3)(L)-(O), Dec. 13, 1991, 105 Stat. 1895, 1896.)

PRIOR PROVISIONS

A prior section 12 of act June 25, 1947, was classified to section 135j of this title prior to amendment of act June 25, 1947, by Pub. L. 92-516.

AMENDMENTS

1991—Subsec. (a)(2)(C). Pub. L. 102-237, §1006(b)(3)(L), substituted “the person’s” for “his” and “the person” for “he” before “received”.

Subsec. (a)(2)(D). Pub. L. 102-237, §1006(b)(3)(M), substituted “the person’s” for “his”.

Subsec. (a)(2)(F). Pub. L. 102-237, §1006(a)(7)(A), substituted “thereunder, except that it” for “thereunder. It”.

Subsec. (a)(2)(O). Pub. L. 102-237, §1006(a)(7)(B), struck out “or” after semicolon at end.

Subsec. (a)(2)(P). Pub. L. 102-237, §1006(a)(7)(C), substituted a semicolon for period at end.

Subsec. (b)(1). Pub. L. 102-237, §1006(b)(3)(N), substituted “the person” for “he” after “from whom” and for “him” after “delivery to”.

Subsec. (b)(3). Pub. L. 102-237, §1006(b)(3)(O), substituted “the official duties of the public official” for “his official duties”.

1988—Subsec. (a)(1). Pub. L. 100-532, §601(b)(2)(A), in introductory provisions, substituted “distribute or sell to any person” for “distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person”.

Subsec. (a)(1)(A). Pub. L. 100-532, §603(1), added subpar. (A) and struck out former subpar. (A) which read as follows: “any pesticide which is not registered under section 136a of this title, except as provided by section 136d(a)(1) of this title;”.

Subsec. (a)(2)(B). Pub. L. 100-532, §603(2)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: “to refuse to keep any records required pursuant to section 136f of this title, or to refuse to allow inspection of any records or establishment pursu-

ant to section 136f or 136g of this title, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 136g of this title;”.

Subsec. (a)(2)(F). Pub. L. 100-532, §§601(b)(2)(B), 801(g), substituted “to distribute or sell, or to make” for “to make” and “thereunder, It” for “thereunder: *Provided, That it*”.

Subsec. (a)(2)(J). Pub. L. 100-532, §801(q)(2)(B), made a technical amendment to the reference to section 136a-1 of this title to reflect the renumbering of the corresponding section of the original act.

Pub. L. 100-532, §603(2)(B), added subpar. (J) and struck out former subpar. (J) which read as follows: “to violate any suspension order issued under section 136d of this title;”.

Subsec. (a)(2)(K). Pub. L. 100-532, §603(2)(B), added subpar. (K) and struck out former subpar. (K) which read as follows: “to violate any cancellation of registration of a pesticide under section 136d of this title, except as provided by section 136d(a)(1) of this title;”.

Subsec. (a)(2)(M). Pub. L. 100-532, §603(2)(C), substituted “this subchapter” for “section 136f of this title”.

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".

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.

§ 136L. 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