(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) of this section, 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) of this section.

(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 subsecs. (d) and (e) of this section.

Subsecs. (d) to (g). Pub. L. 95–396, § 15(2), added subsecs. (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 submit such reports concerning the commercial application, sale, or distribution of such pesticide as the Administrator may by regulation prescribe. Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of the pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual's certification. The certification standard for a private applicator shall, under a State plan submitted for approval, be deemed fulfilled by the applicator completing a certification form. The Administrator shall further assure that such form contains adequate information and affirmations to carry out the intent of this subchapter, and may include in the form an affirmation that the private applicator has completed a training program approved by the Administrator so long as the program does not require the private applicator to take, pursuant to a requirement prescribed by the Administrator, any examination to establish competency in the use of the pesticide. The Administrator may require any pesticide dealer participating in a certification program to be licensed under a State licensing program approved by the Administrator.

(2) State certification

If any State, at any time, desires to certify applicators of pesticides, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in the Administrator's judgment—

(A) designates a State agency as the agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1).

Any State certification program under this section shall be maintained in accordance with the State plan approved under this section.

(b) State plans

If the Administrator rejects a plan submitted under subsection (a)(2) of this section, the Administrator shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under subsection (a)(2) of this section, then such State shall certify applicators of pesticides with respect to such State. Whenever the Administrator determines that a State is not administering the certification program in accordance with the plan approved under this section, the Administrator shall so notify the State and provide for a hearing at the request of the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such plan.

(c) Instruction in integrated pest management techniques

Standards prescribed by the Administrator for the certification of applicators of pesticides under subsection (a) of this section, and State plans submitted to the Administrator under subsection (a) of this section, shall include provisions for making instructional materials concerning integrated pest management techniques available to individuals at their request in accordance with the provisions of section 136u(c) of this title, but such plans may not require that any individual receive instruction concerning such techniques or to be shown to be competent with respect to the use of such techniques. The Administrator and States implementing such plans shall provide that all interested individuals are notified on the availability of such instructional materials.