USER FEES

Pub. L. 101–508, title I, § 1204(e), Nov. 5, 1990, 104 Stat. 1388–11, provided that: ''Notwithstanding any provision of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508, see Tables for classification], nothing in this title or the other provisions of this Act shall be construed to require or authorize the Administrator of the Environmental Protection Agency to assess or collect any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).''

§ 136w–1. State primary enforcement responsibility

(a) In general

For the purposes of this subchapter, a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State—

(1) has adopted adequate pesticide use laws and regulations, except that the Administrator may not require a State to have pesticide use laws that are more stringent than this subchapter;

(2) has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations; and

(3) will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation.

(b) Special rules

Notwithstanding the provisions of subsection (a) of this section, any State that enters into a cooperative agreement with the Administrator under section 136u of this title for the enforcement of pesticide use restrictions shall have the primary enforcement responsibility for pesticide use violations. Any State that has a plan approved by the Administrator in accordance with the requirements of section 136i of this title that the Administrator determines meets the criteria set out in subsection (a) of this section shall have the primary enforcement responsibility for pesticide use violations. The Administrator shall make such determinations with respect to State plans under section 136i of this title in effect on September 30, 1978, not later than six months after that date.

(c) Administrator

The Administrator shall have primary enforcement responsibility for those States that do not have primary enforcement responsibility under this subchapter. Notwithstanding the provisions of section 136(e)(1) of this title, during any period when the Administrator has such enforcement responsibility, section 136f(b) of this title shall apply to the books and records of commercial applicators and to any applicator who holds or applies pesticides, or uses dilutions of pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and section 136g(a) of this title shall apply to the establishment or other place where pesticides or devices are held for application by such persons with respect to pesticides or devices held for such application.

(June 25, 1947, ch. 125, § 26, as added Pub. L. 95–396, § 24(2), Sept. 30, 1978, 92 Stat. 836; amended Pub. L. 100–532, title VIII, § 801(*o*), (q)(1)(D), Oct. 25, 1988, 102 Stat. 2683; Pub. L. 102–237, title X, § 1006(a)(11), Dec. 13, 1991, 105 Stat. 1895.)

PRIOR PROVISIONS

A prior section 26 of act June 25, 1947, ch. 125, was renumbered section 34 and is classified to section 136x of this title.

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–237 substituted ''uses'' for ''use''.

1988—Subsec. (a). Pub. L. 100–532, § 801(*o*)(1), (2), inserted heading and substituted ''regulations. The Administrator'' for ''regulations; *Provided*, That the Administrator'' in par. (1).

Subsec. (b). Pub. L. 100–532, § 801(*o*)(3), (q)(1)(D), inserted heading and substituted ''136i'' for ''136b'' in two places.

Subsec. (c). Pub. L. 100–532, § 801(*o*)(4), inserted heading.

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.

§ 136w–2. Failure by the State to assure enforcement of State pesticide use regulations

(a) Referral

Upon receipt of any complaint or other information alleging or indicating a significant violation of the pesticide use provisions of this subchapter, the Administrator shall refer the matter to the appropriate State officials for their investigation of the matter consistent with the requirements of this subchapter. If, within thirty days, the State has not commenced appropriate enforcement action, the Administrator may act upon the complaint or information to the extent authorized under this subchapter.

(b) Notice

Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out (or cannot carry out due to the lack of adequate legal authority) such responsibility, the Administrator shall notify the State. Such notice shall specify those aspects of the administration of the State program that are determined to be inadequate. The State shall have ninety days after receipt of the notice to correct any deficiencies. If after that time the Administrator determines that the State program remains inadequate, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

(c) Construction

Neither section 136w–1 of this title nor this section shall limit the authority of the Administrator to enforce this subchapter, where the Administrator determines that emergency conditions exist that require immediate action on the part of the Administrator and the State authority is unwilling or unable adequately to respond to the emergency.

(June 25, 1947, ch. 125, § 27, as added Pub. L. 95–396, § 24(2), Sept. 30, 1978, 92 Stat. 837; amended Pub. L. 100–532, title VIII, § 801(p), Oct. 25, 1988, 102 Stat. 2683.)