

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 110

[SD-94-001]

RIN 0581-AB22

**Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides**

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

**SUMMARY:** The Agricultural Marketing Service, United States Department of Agriculture, is amending its regulations governing recordkeeping of federally restricted use pesticides by certified applicators. The final regulations revise the definitions of the terms "medical emergency" and "licensed health care professional," provide new requirements for recording the location of "spot applications" of federally restricted use pesticides, reduce the time period for a certified applicator to make a record of the application of a federally restricted use pesticide, clarify the circumstances under which licensed health care professionals may obtain, utilize, and release restricted use pesticide records or record information, and clarify the penalty provisions in the regulations. The changes to the rule ensure that the regulations are consistent with the objectives of section 1491 of the Food, Agriculture, Conservation, and Trade Act of 1990. The changes should further ensure accuracy of records of the application of federally restricted use pesticides, and improve the ability of licensed health care professionals to provide medical treatment to an individual who may have been exposed to a federally restricted use pesticide.

EFFECTIVE DATE: May 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Poli, Chief, Pesticide Records Branch, Science Division, AMS, 8700 Centreville Road, Suite 200, Manassas, VA 22110, 703-330-7826.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866 and Regulatory Flexibility Act**

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by OMB.

This rule also has been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will (1) revise certain definitions within the regulations; (2) require the location of

spot applications of federally restricted use pesticides be designated as "spot application" followed by a concise description of location and treatment; (3) reduce the time period within which the information required by the regulations must be recorded; (4) clarify the availability of pesticide record information to facilitate medical treatment or first aid; (5) clarify the utilization and release of pesticide records or record information by licensed health care professionals; and (6) clarify the penalty provisions.

The Administrator of AMS has determined that approximately 1.3 million certified pesticide applicators (980,000 private and 300,000 commercial applicators) will be affected by this final rule. However, we do not anticipate that any of the revisions to the regulations or additional requirements will result in any significant additional economic impact on certified applicators of federally restricted use pesticides. The amendments to the rule will not increase the amount of time necessary for a certified applicator to record the information required by the regulations. Although the regulations will require certified applicators to record a concise description of the location of a "spot application," this requirement does not significantly increase the time to make a record.

Under these circumstances, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceedings before parties may file suit challenging this rule.

**Paperwork Reduction Act**

In accordance with Section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the recordkeeping provisions included in this rule have been approved by the Office of Management and Budget (OMB), number 0581-0164.

**Background**

As part of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 136i-1), hereinafter referred to as the FACT Act, Congress mandated the

establishment by the Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency, of requirements for recordkeeping by all certified applicators of federally restricted use pesticides.

The regulations at 7 CFR part 110, "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides," (hereinafter referred to as the regulations) require certified pesticide applicators to maintain records of federally restricted use pesticide applications for a period of 2 years. The regulations also provide for access to pesticide records or record information by federal or state officials, or by licensed health care professionals when needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions. The regulations became effective on May 10, 1993.

After publication of the regulations, AMS proceeded with the implementation of a national program for recordkeeping of federally restricted use pesticides. Early in the implementation phase of the AMS recordkeeping program, state regulatory agencies and others raised issues involving specific interpretations of the regulations. A lawsuit was filed against the Secretary of Agriculture and the Administrator of the Environmental Protection Agency by the National Coalition Against the Misuse of Pesticides and others. The lawsuit challenged the substance of limited portions of the final regulations promulgated by AMS.

**Proposed Rule**

After a thorough review of the regulations and consideration of the issues raised by the lawsuit, we published a document on April 6, 1994, in the **Federal Register** (59 FR 16400-16403), proposing to amend the recordkeeping regulations for federally restricted use pesticides.

**Comments on the Proposed Rule**

AMS solicited comments concerning our proposal for a 60 day comment period ending June 6, 1994. We received 47 comments from certified pesticide applicators, medical professionals, agricultural and farmworker organizations, State Departments of Agriculture, State Cooperative Extension Services and other individuals and groups. The comments received and our responses to those comments are as follows.

**Section 110.2—Definitions***Licensed Health Care Professional*

The current regulations define "licensed health care professional" as "a physician, nurse, emergency medical technician or other qualified individual, licensed by a State to provide medical treatment."

AMS proposed to amend the definition of a "licensed health care professional" to mean "a physician, nurse, emergency medical technician or other qualified individual, licensed or certified by a state to provide medical treatment." AMS proposed this amendment to clarify our intention to include qualified individuals who have been certified by a state to provide medical treatment in the definition of "licensed health care professional."

Many comments supported the proposed change in the definition citing the need to include all individuals who are either state certified or licensed, and are qualified to provide medical treatment in cases of pesticide related illness in the definition of "licensed health care professional." For example, one commentor stated, "the proposed definition recognizes the realities of modern health care, in that many tasks are performed by paraprofessionals and other persons working under the direction of licensed professionals." Another commentor stated, "\* \* \* often the first responder for medical emergencies or medical care is not a licensed health care professional. The definition needs to be broadened to include other professionals to ensure greater access to immediate and appropriate medical treatment."

AMS agrees that under some circumstances certified individuals are qualified to provide medical treatment for pesticide related exposures. Some states use the term "certified" and "licensed" interchangeably. For example, a "licensed nurse practitioner" in one state may be classified as a "certified nurse practitioner" in another state. Therefore, this final rule amends the definition of "licensed health care professional" to include any qualified individuals certified by a state to provide medical treatment. However, individuals who have been certified only to provide first aid or cardiopulmonary resuscitation (CPR) through organizations such as the American Red Cross are not included in the definition of "licensed health care professional" in this final rule.

AMS also received comments which expressed concerns that allowing access by "certified" individuals would greatly expand access to private record information to individuals who are not

qualified to provide proper treatment for pesticide related illnesses. One commentor stated, "\* \* \* there are 23 different health care professionals certified by the state including such professions as: Athletic Training, Chiropractic, Mental Health Practice, Physical Therapy and Psychology. Under the proposed changes, these professionals would be able to request records and release the information. This change would not increase health protection, but rather provide an avenue for non-related health care professionals to have access to private records."

We agree with comments received expressing concerns that certified individuals such as physical or athletic therapists should not be able to request pesticide record information. We are addressing these concerns in section 110.5(a) by allowing only the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, access to record information. This amendment to section 110.5(a) should eliminate the request for pesticide record information by individuals who are not qualified to provide medical treatment for pesticide related injuries or illness.

For these reasons, we are adopting the proposed language. "Licensed health care professional" shall be defined as "a physician, nurse, emergency medical technician, or other qualified individual, licensed or certified by a State to provide medical treatment."

*Medical Emergency*

The current regulations define "medical emergency" as "injuries or illnesses which require immediate medical attention to prevent life-threatening or disabling conditions."

AMS proposed to change the definition of "medical emergency" after concerns were raised that the definition was too restrictive and could hinder medical treatment by licensed health care professionals of individuals who may have been exposed to a federally restricted use pesticide. It was not the intent of AMS to limit medical treatment of persons who may have been exposed to a restricted use pesticide. Therefore, AMS proposed that the term "medical emergency" be defined as "a situation that requires immediate medical treatment or first aid."

AMS received 27 comments concerning the proposed change to the definition of "medical emergency." The commentors who supported the proposed definition stated that the current definition was too restrictive. For example, one commentor stated that

the proposed definition "\* \* \* ensures that all instances of pesticide related illnesses can be appropriately dealt with; that they do not get omitted inadvertently due to an overly narrow definition." Another commentor stated, "Expanding this definition ensures the appropriate care and medical response for all pesticide related illnesses."

Commentors who opposed the proposed change stated that the current and proposed definitions of "medical emergency" are too broad because they encompass illnesses or injuries that have nothing to do with possible pesticide poisonings. One of these commentors stated that "The definition should refer to and be limited to the related pesticide situation to avoid confusion and misunderstanding." However, the comments opposing the change to the definition did support providing the record information when appropriate for pesticide related illness.

AMS agrees that the current definition of "medical emergency" is too restrictive and could hinder appropriate medical treatment to individuals who may have been exposed to a federally restricted use pesticide. After considering the comments, we have adopted a definition that is less restrictive than the current definition and provides for more appropriate access to record information for a medical emergency. The definition of "medical emergency" in the final rule encompasses situations that require immediate medical treatment or first aid as set forth in the proposal. Further, in response to the comments which stated that the definition was too broad, we added a phrase which limits the definition of medical emergency to situations that require treatment or first aid "to treat possible symptoms of pesticide poisoning or exposure."

Therefore, this final rule amends the definition of "medical emergency" to read as follows: "A situation that requires immediate medical treatment or first aid to treat possible symptoms of pesticide poisoning or exposure."

**Section 110.3(a)(6)—Spot Applications**

The current pesticide recordkeeping regulations provide reduced requirements for recording information for "spot applications." Section 110.3(a)(6) provides that applications of restricted use pesticides made on the same day in a total area of less than one-tenth (1/10) of an acre require the following elements be recorded: (1) Brand or product name and EPA registration number; (2) total amount applied; (3) location must be designated as "spot application"; and (4) the date of application. Section 110.3(a)(6) does

not apply to records maintained for greenhouse and nursery applications.

The reduced requirements for recordkeeping information for "spot applications" were intended to provide certified applicators with an incentive to record small spot applications on noxious weeds or similar type applications, without recording each location, due to the usually small amount of pesticide associated with a spot application.

After concerns were raised that the required spot application record information was not adequate for medical treatment because a specific location was not required to be recorded for each spot application, AMS proposed to delete section 110.3(a)(6), the spot application record element. By deleting section 110.3(a)(6), spot applications would be recorded in the same manner as all other federally restricted use pesticide applications.

AMS received 35 comments addressing the deletion of the spot application provision. Comments which supported the deletion of the spot application provision generally stated that specific locations can provide important information for medical treatments. For example one commentator stated, "In cases where an individual may have been poisoned by a spot application, it may be critically important to know the specific location of the application."

Comments opposing the proposed change stated that it would be extremely difficult to record the specific location of a spot application. For example one commentator stated that "It would be very difficult, if not impossible, to provide the exact legal description of the area treated." Other commentators were concerned that the proposed change would be extremely burdensome to certified applicators, increase their workload and operating costs, and therefore have an economic impact. Other commentators stated that if the recordkeeping requirements become too burdensome, the net result would be non-compliance.

AMS recognizes the importance of location information where an entire field or area has been treated. AMS also recognizes that, in some instances, knowing that a spot application was performed could be valuable information when needed to determine if a possible pesticide exposure could have occurred in a field or area.

Moreover, because the purpose of a spot application is to apply pesticide to a small area targeting a specific pest, such as noxious weeds or an ant mound, it would be impractical to require certified applicators to supply a precise

description of each application within a field or production area, in order to make an exact determination if a possible pesticide exposure occurred.

In order to provide information on the location of spot pesticide applications, and avoid a cumbersome recording requirement for such spot applications, this final rule maintains the spot application provision in the regulations, but requires a more detailed description of the location of spot applications to be recorded than is currently required by section 110.3(a)(6). This final rule requires the certified applicator to provide location, designated as "spot application," followed by a concise description of the location and treatment for spot applications of a federally restricted use pesticide. For example, a certified applicator who applied pesticides for noxious weeds could record the location and treatment as "spot application," followed by a concise description such as "treated thistle over entire farm acreage;" a certified applicator who treated for fire ants could record the location of the application by stating "spot application, sprayed fire ant mounds on pastures of lower creek farm." The description of the location of spot applications should assist licensed health care professionals to determine whether an individual has been exposed to a federally restricted use pesticide.

Additionally we are making other changes for clarification and consistency between the recordkeeping requirements for spot applications and those for other applications set forth at section 110.3(a)(1-5) which is redesignated in this final rule as section 110.3(a). We are amending section 110.3(a)(6)(iv) from "the date of application" to "the month, day, and year on which the restricted use pesticide application occurred." This language is consistent with that used in section 110.3(a)(4).

Accordingly, this final rule amends the spot application provision in section 110.3(a)(6), which is redesignated in this final rule as section 110.3(b), to require certified applicators to maintain records of applications of restricted use pesticides made on the same day in a total area of less than one-tenth (1/10) of an acre. These records must include, for the application, the brand or product name and EPA registration number; total amount applied; location, designated as "spot application," followed by a concise description of location and treatment; and the month, day, and year on which the restricted use pesticide application occurred. This final rule does not change requirements as previously established for greenhouse

and nursery applications of restricted use pesticides. The provisions for spot applications do not apply to applications of restricted use pesticides in greenhouses and nurseries. Instead, certified applicators who make applications in greenhouses and nurseries are required to keep all the data elements required by section 110.3(a).

#### **Section 110.3(b)—Time for Making an Official Record**

The current regulations provide that the information required for a record shall be recorded within 30 days following the pesticide application.

Concerns were raised regarding the accuracy of the records for both collecting information for a pesticide use data base and for medical treatment if application information was only required to be recorded within 30 days following the pesticide application. AMS responded by proposing that a record of the application of a restricted use pesticide be made within 7 days following the pesticide application.

AMS received 41 comments on this issue. Comments ranged from suggestions that a record be completed upon application, within 24 hours, shortened to 2 days, 3 days, 5 days, 14 days and maintained at the 30 day time period.

Some commentators supported requiring certified applicators to record the required pesticide information within 7 days or less after application of the pesticide in order to have information available for medical treatment of possible pesticide exposure. AMS supports the need to have accurate information available in cases of medical treatment and has addressed these concerns by requiring in section 110.5(a), as amended by this final rule, that certified applicators provide the record information promptly to the attending licensed health care professional when necessary to provide medical treatment or first aid, and immediately when the attending licensed health care professional determines that there is a medical emergency.

AMS disagrees with those commentators who stated that pesticide application information must be recorded shortly after the pesticide has been applied so that it can be available for medical treatment. The current regulations require certified applicators to provide accurate record information for purposes of providing medical treatment or first aid, in accordance with section 110.5(a), whether or not the time to make a written record has elapsed. This final rule amends the

regulations by adding language which clarifies the certified applicator's responsibility to provide federally restricted use pesticide record information for medical treatment.

AMS also received comments supporting allowing 30 days to record pesticide application information because it was consistent with section 1491(a)(2) of the FACT Act which requires certified commercial applicators to provide a copy of a restricted use application record within 30 days of the application. Although the FACT Act requires certified commercial applicators to provide a copy of the record information to their clients within 30 days of application, it does not provide a time period within which a certified applicator, private or commercial, shall make a record.

In addition, numerous commentors supported the 30 day period to make a record because they believed the 7 days did not provide certified applicators adequate time to make a record in peak production periods. AMS has reevaluated the proposed 7 day time period and agrees that during peak production periods certified applicators could need more time to make accurate records due to the long hours many applicators spend in the field during those periods.

Therefore, to provide a balanced approach to assure accurate information for data collection on federally restricted use pesticides and provide adequate time for certified applicators to make a record, we are amending section 110.3(b), which is redesignated in this final rule as section 110.3(c), to require that certified applicators must complete the record within 14 days following the pesticide application. However, whether or not the written record has been completed, the certified applicator shall provide the information to be recorded in accordance with section 110.5(a).

AMS also received comments from certified commercial applicators objecting to the change in the time frame to provide copies of restricted use application records to clients from 30 days to the proposed 7 days. We did not propose to change, nor does this final rule change the time within which certified commercial applicators must provide clients with copies of records of restricted use applications. Certified commercial applicators are still given 30 days to provide a copy of the federally restricted use application record to their clients.

AMS also received comments requesting clarification of the use of the term "official record" in the supplementary information in the proposed rule. The use of the term

"official record" was incorrect. Its use was our attempt to describe the recording of a pesticide application as required under 7 CFR part 110.

#### **Section 110.5(a)—Availability of Records To Facilitate Medical Treatment**

Currently, section 110.5(a) of the rule states: "When a licensed health care professional determines that any record of the application of restricted use pesticide required to be maintained under § 110.3 of this part is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is maintained, the certified applicator required to maintain the record shall provide the record information and any available label information promptly to the licensed health care professional. If it is determined by a licensed health care professional to be a medical emergency, the record information of the restricted use pesticide relating to the medical emergency shall be provided immediately."

AMS proposed to amend section 110.5(a) to address concerns that if a strict interpretation was applied to this section, it would require the licensed health care professional to personally make the record information request and possibly hinder access to record information and medical treatment. AMS never intended to prevent an individual acting under the direction of the attending licensed health care professional from requesting record information. We are aware that, in some instances, the attending licensed health care professional may rely on a person acting under his/her direction to make the contacts necessary to obtain the pesticide record information.

In order to clarify the regulations concerning the availability of pesticide record information to facilitate medical treatment, AMS proposed to amend section 110.5(a) to provide that either the licensed health care professional or an individual acting under the direction of the attending licensed health care professional could request record information when necessary to provide medical treatment or first aid. The proposed amendment reads as follows: "When a licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, determines that any record of the application of restricted use pesticide required to be maintained under § 110.3 of this part is necessary to provide medical treatment or first aid to an individual who may have been exposed

to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by a licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately."

AMS received 28 comments regarding proposed section 110.5(a). Most of the commentors supported the proposed change. Additionally, several commentors supported the concept of the proposed amendment, but suggested changes in the proposed language to decrease the possibility of unqualified licensed health care professionals obtaining the record information.

After consideration of the comments, AMS agrees that the proposed language could be more specifically worded to address comments received regarding access to records by licensed health care professionals who may not be qualified to provide treatment for pesticide related illness. Therefore, we are adding the word "attending" to licensed health care professional to be consistent throughout the rule and help eliminate request for records or record information from individuals who may be licensed or certified by a state to provide medical treatment or first aid, but are not qualified to provide medical treatment for possible pesticide injury or illness. This final rule amends section 110.5(a) to read as follows:

When the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, determines that any record of the application of a restricted use pesticide required to be maintained under § 110.3 is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately.

### Section 110.5(b)—Release of Record Information by Licensed Health Care Professionals

Under the current regulations, licensed health care professionals may release record information obtained through section 110.5(a) only when necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is maintained. Section 110.5(b) provides: "No licensed health care professional shall release any record or information from the record obtained under paragraph (a) of this section except as necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is maintained."

Due to concerns that section 110.5(b) was too restrictive, AMS proposed to expand the circumstances under which the pesticide record information could be utilized and released, and to clarify who had the authority to release this information. Accordingly, AMS proposed to amend section 110.5(b) to provide: A licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release the record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual or individuals who may have been exposed to the restricted use pesticide for which the record is or will be maintained. Further utilization and release of such record or record information is limited to licensed health care professionals who may use it: (1) To submit pesticide poisoning incident reports to appropriate State or Federal agencies, or (2) where consideration of medical ethics may necessitate such utilization and release.

In general, the comments received supported the proposed amendments to section 110.5(b). However, many comments expressed concern with the use of the term "medical ethics" as a criterion for the release of pesticide record information. One commentor stated, "\* \* \* matters of ethics are, in some respects, shared by a group, but are also inherently personal and subjective." Numerous commentors also thought that the use of "medical ethics" was vague and were opposed to the proposal unless the phrase was clarified as to what constitutes "consideration of medical ethics." However, the comments generally supported the use of record information by the licensed

health care professional if it would prevent further pesticide health hazards.

AMS agrees with the comments stating that the attending licensed health care professional in some instances should be able to utilize pesticide record information to prevent additional poisoning or injuries. AMS also agrees with the commentors that stated that the use of the term "medical ethics" is vague and open for broad interpretation. Therefore, the amended language deletes the use of the phrase "medical ethics." Accordingly, this final rule provides the attending licensed health care professional with the ability to release pesticide record information to appropriate agencies when necessary to prevent further injury or illness.

In addition, comments expressed the need to allow licensed health care professionals the flexibility to meet requirements of pesticide poisoning incident reporting. Again, comments generally supported the concept. However, some commentors were concerned about the certified applicator's right to confidentiality in the process of reporting.

AMS agrees that the proposed language can be improved in order to address many of the comments and still provide the needed flexibility to assure that licensed health care professionals can utilize and release the pesticide record information for appropriate reasons.

Therefore, we are amending section 110.5(b) to read as follows:

(1) The attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release the record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained. (2) The attending licensed health care professional may release the record or record information to appropriate federal or state agencies that deal with pesticide use or any health issue related to the use of pesticides when necessary to prevent further injury or illness. (3) A licensed health care professional may release the record or record information to submit pesticide poisoning incident reports to appropriate state or federal agencies.

### Section 110.7—Penalties

Section 110.7 provides that "any certified applicator who violates 7 U.S.C. 136i-1 (a), (b), or (c) shall be liable for a civil penalty of not more than \$500 in the case of the first offense,

and of not less than \$1,000 in the case of each subsequent offense, except that the penalty shall be less than \$1,000 for a second offense if the Administrator determines that the certified applicator made a good faith effort to comply with this part."

Several state pesticide regulatory agencies had questions regarding the application of the penalty provisions in section 110.7. After reexamining the issue, AMS proposed to amend section 110.7 to eliminate any ambiguity and make it clear that the Administrator of AMS, or the Administrator's designee, has flexibility in assessing civil penalties. The proposed changes paralleled the language in subsection (d) of the FACT Act. AMS proposed to amend section 110.7 to provide that "any certified applicator who violates the requirements of 7 U.S.C. 136i-1 (a), (b), or (c) shall be subject to a civil penalty of not more than \$500 in the case of the first offense, and in the case of subsequent offenses, be subject to a fine of not less than \$1,000 for each violation, except that the penalty shall be less than \$1,000 if the Administrator, or his designee, determines that the certified applicator made a good faith effort to comply with this Part."

Numerous comments supported the proposed amendment. For example, one commentor stated, "\* \* \* the flexibility to tailor penalties to specific situations and consider the effort made to comply with the regulations are essential elements of good program implementation and enforcement."

Comments opposing the proposed change asserted that the Secretary of Agriculture should not have the discretion to waive the fine. AMS disagrees. The FACT Act provides the Secretary discretion to determine whether or not a penalty shall be assessed for violations of the FACT Act, and to assess a penalty of less than \$1,000 if the Secretary determines that the certified applicator made a good faith effort to comply.

Therefore, we are adopting the proposed language, with some minor changes for clarity. This final rule amends section 110.7 to read as follows: "Any certified applicator who violates the requirements of 7 U.S.C. 136i-1 (a), (b), or (c) or this part shall be subject to a civil penalty of not more than \$500 in the case of the first offense, and in the case of subsequent offenses, be subject to a civil penalty of not less than \$1,000 for each violation, except that the civil penalty shall be less than \$1,000 if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i-1 (a), (b), and (c) and this part."

**Other Comments**

We also received a number of comments which are beyond the scope of this rulemaking proceeding, and therefore we are not addressing those comments in this final rulemaking document.

**Conclusion**

Based upon the rationale in the proposed rule and this rulemaking document, we are adopting the provisions of the proposal as a final rule, except as previously discussed in this document and except for minor editorial changes for clarity.

**List of Subjects in 7 CFR Part 110**

Pesticide and pests, reporting and recordkeeping requirements.

Therefore, 7 CFR part 110, is amended as follows:

**PART 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS**

1. The authority citation for part 110 is revised to read as follows:

**Authority:** 7 U.S.C. 136a(d)(1)(c), 136i-1, and 450; 7 CFR 2.17, 2.50.

2. In § 110.2, the definition of the term "licensed health care professional" is amended by adding the phrase "or certified" immediately following the word "licensed".

3. In § 110.2, the definition of the term "medical emergency" is revised to read as follows:

**§ 110.2 Definitions.**

\* \* \* \* \*

*Medical emergency.* A situation that requires immediate medical treatment or first aid to treat possible symptoms of pesticide poisoning or exposure.

\* \* \* \* \*

4. In § 110.2, the definition of the word "recordkeeping" is amended by removing the reference to "§ 110.3(a)(1) through (6) of this part" and adding "§ 110.3(a) and (b)" in its place.

5. Section 110.3 is amended as follows:

a. Paragraph (a) is revised as set forth below.

b. Paragraphs (b) through (g) are redesignated as paragraphs (c) through (h) respectively.

c. New paragraph (b) is added to read as set forth below.

d. Redesignated paragraph (c) is revised as set forth below.

**§ 110.3 Records, retention, and access to records.**

(a) Certified applicators of restricted use pesticides shall maintain records of

the application of restricted use pesticides. Except as provided in paragraph (b) of this section, these records shall include the following information for each application:

(1) The brand or product name, and the EPA registration number of the restricted use pesticide that was applied;

(2) The total amount of the restricted use pesticide applied;

(3) The location of the application, the size of area treated, and the crop, commodity, stored product, or site to which a restricted use pesticide was applied. The location of the application may be recorded using any of the following designations:

(i) County, range, township, and section;

(ii) An identification system utilizing maps and/or written descriptions which accurately identify location;

(iii) An identification system established by a United States Department of Agriculture agency which utilizes maps and numbering system to identify field locations; or

(iv) The legal property description.

(4) The month, day, and year on which the restricted use pesticide application occurred; and

(5) The name and certification number (if applicable) of the certified applicator who applied or who supervised the application of the restricted use pesticide.

(b) Certified applicators shall maintain records of the application of restricted use pesticides made on the same day in a total area of less than one-tenth ( $1/10$ ) of an acre. Except for applications of restricted use pesticides in greenhouses and nurseries, to which the requirements of paragraph (a) of this section apply, these records shall include the following information for the application:

(1) The brand or product name, and the EPA registration number of the restricted use pesticide that was applied;

(2) The total amount of the restricted use pesticide applied;

(3) The location of the application, designated as "spot application," followed by a concise description of location and treatment; and

(4) The month, day, and year on which the restricted use pesticide application occurred.

(c) The information required in this section shall be recorded within 14 days following the pesticide application.

However, whether or not the written record has been completed, the certified applicator shall provide the information

to be recorded in accordance with § 110.5(a).

\* \* \* \* \*

6. Section 110.5 is revised to read as follows:

**§ 110.5 Availability of records to facilitate medical treatment.**

(a) When the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, determines that any record of the application of any restricted use pesticide required to be maintained under § 110.3 is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately.

(b)(1) The attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release the record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained.

(2) The attending licensed health care professional may release the record or record information to appropriate federal or state agencies that deal with pesticide use or any health issue related to the use of pesticides when necessary to prevent further injury or illness.

(3) A licensed health care professional may release the record or record information to submit pesticide poisoning incident reports to appropriate state or federal agencies.

7. Section 110.7 is revised to read as follows:

**§ 110.7 Penalties.**

Any certified applicator who violates 7 U.S.C. 136i-1 (a), (b), or (c) or this part shall be subject to a civil penalty of not more than \$500 in the case of the first offense, and in the case of subsequent offenses, be subject to a civil penalty of not less than \$1,000 for each violation, except that the civil penalty shall be less

than \$1,000 if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i-1 (a) (b), and (c) and this part.

Dated: February 2, 1995.  
**Lon Hatamiya,**  
*Administrator.*  
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