

§ 110.4

7 CFR Ch. I (1-1-05 Edition)

to copy any of the records. The original of the records required to be maintained under this section shall be retained by the certified pesticide applicators.

(g) No Federal or State agency shall release information obtained under this part that would directly or indirectly reveal the identity of producers of commodities to which restricted use pesticides have been applied.

(h) Certified applicators who apply restricted use pesticides in States where they are required to maintain records on applications of restricted use pesticides, comparable to those for commercial applicators in that State, and such records are maintained in accordance with State requirements, are not subject to paragraphs (a), (b), and (c) of this section.

[58 FR 19022, Apr. 9, 1993, as amended at 60 FR 8123, Feb. 10, 1995]

§ 110.4 Demonstration of compliance.

The Secretary is authorized to inspect and copy any record required to be maintained by this part in order to determine whether a certified applicator is complying with this part.

§ 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 act-

ing 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.

[60 FR 8123, Feb. 10, 1995]

§ 110.6 Federal cooperation with States.

(a) For the purpose of carrying out this part, the Administrator may enter into agreements with States.

(b) The Administrator may, after entering a State-Federal cooperative agreement with a State, utilize employees and facilities of the State to carry out any provisions of this part in that State. This State-Federal cooperative agreement shall specify:

(1) The agency of the State that is designated as the State lead agency;

(2) The responsibilities of State agencies for the enforcement of this part and the imposition of penalties under this part;

(3) The qualifications required of the State employees administering and enforcing this part;

(4) That the State-Federal cooperative agreement may be terminated at any time by the mutual agreement of the parties to the agreement;

(5) That the State-Federal cooperative agreement may be terminated by either party by giving written notice to the other party at least 90 days before a specified date of termination; and

(6) The provisions for liaison between the State and the Administrator concerning the administration and enforcement of this part as may be agreed by the Administrator and the State.

(c) If at any time the Administrator shall determine that the State lead agency or other State agencies charged with carrying out the terms of the State-Federal cooperative agreement are unable or unwilling to carry out the terms of the agreement, or, if for any reason the Administrator or State shall determine that the agreement is no longer in effect, the Administrator shall administer and enforce this part in the State.

(d) If a State shall notify the Administrator of its readiness to enter into a State-Federal cooperative agreement prior to passage of State legislation and regulations governing record-keeping by certified applicators of restricted use pesticides, the Administrator may enter into a State-Federal cooperative agreement with the State on an annual basis.

(e) For a State to be eligible for Federal technical or financial assistance under a State-Federal cooperative agreement, the State requirements for recordkeeping by all certified applicators of restricted use pesticides must be comparable to the recordkeeping requirements under this part.

§ 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.

[60 FR 8123, Feb. 10, 1995]

§ 110.8 Rules of practice.

(a) *Notice of violation.* If there is reason to believe that a person has violated or is violating any provision of this part, the complainant may file with the Presiding Officer a notice of

violation signed by the complainant. The notice of violation shall state:

- (1) The date of issuance of the notice of violation;
- (2) The nature of the proceeding;
- (3) The identification of the complainant and respondent;
- (4) The legal authority under which the proceeding is instituted;
- (5) The allegations of fact and provisions of law which constitute the basis for the proceeding;
- (6) The amount of the proposed civil penalty; and
- (7) The name, mailing address, and telephone number of the Presiding Officer.

(b) *Answer.* Within 30 days after the service of the notice of violation, the respondent shall file with the Presiding Officer an answer signed by the respondent or by the attorney of record in the proceeding. The answer shall:

- (1) Admit, deny, or explain each of the allegations in the notice of violation and set forth any defense asserted by the respondent; or
- (2) State that the respondent admits all the facts alleged in the notice of violation; or
- (3) State that the respondent admits the jurisdictional allegations in the notice of violation and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file an answer within 30 days after service of the notice of violation shall be deemed, for purposes of the proceeding, an admission of the allegations in the notice of violation, and failure to deny or otherwise respond to an allegation in the notice of violation shall be deemed, for purposes of the proceeding, an admission of the allegation, unless the complainant and respondent have agreed to a consent decision pursuant to paragraph (e) of this section.

(d) *Amendment of notice of violation or answer.* At any time prior to the filing of a motion for a hearing, the notice of violation or answer may be amended with the consent of the complainant and respondent or as authorized by the Presiding Officer upon a showing of good cause.