

PROPOSED REVISIONS IN THE RECORDKEEPING REQUIREMENTS

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The Agricultural Marketing Service (AMS) of USDA is proposing to revise the "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides" (7 CFR Part 110) that were implemented last year. A law suit was filed to clarify certain portions of the regulations and to ensure consistency with the objectives of the Food, Agricultural, Conservation and Trade Act of 1990 (the 1990 Farm Bill).

A 60 day public comment period ends on June 6, 1994 for the proposed changes. Interested persons are invited to submit comments concerning the proposed amendments to: Bonnie Poli, Docket Manager, USDA/AMS, Science Division, Pesticide Records Branch, 8700 Centerville Rd., Suite 200, Manassas, VA 22110-8411. Reference should be made to the docket title and number located on the heading of the FEDERAL REGISTER NOTICE (see below). Comments must be received no later than June 6, 1994. For more information contact: Pesticide Records Branch, 8700 Centerville Rd., suite 200, Manassas, VA 22110-8411, phone (703) 330-7826. I would recommend anyone wishing to make comments on the proposed changes obtain a copy of the Federal Register Notice. I am able to provide copies of the Federal Register Notice for a limited number of single copy requests.

Also note that the Minnesota Department of Agriculture (MDA) and the USDA have reached and signed a memorandum of understanding establishing the MDA as the state lead agency for the recordkeeping regulations.

Federal Register Vol. 59, No. 66 Proposed Rules; Department of Agriculture, Agricultural Marketing Service, 7 CFR Part 110 [SD-94-001 PR, RIN No. 0581-AA39 Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides.

Summary of the proposed rule changes:

A) Proposed change of definition of 'medical emergency' to:

"A medical emergency shall be defined as a situation that requires immediate medical treatment or first aid."

This is an attempt to provide rule coverage to all situations where exposure to a federally restricted use pesticide occurs and which requires immediate medical treatment or first aid.

B) Proposed change of definition of 'licensed health care professional' to:

"A physician, nurse, emergency medical technician, or other qualified individual, licensed or certified by a State to provide medical treatment."

This is an attempt to clarify who is and who is not able to access pesticide records. Persons trained or certified only to provide first aid or CPR through organizations such as the American Red Cross would not be considered a 'licensed health care professional'.

C) Proposed deletion of reduced recordkeeping requirements for spot applications of pesticides.

Under the original rule, as implemented last year, less information is required to be kept for spot applications of pesticides. Concern has been raised that by not recording the location of spot applications it may be difficult to determine if an exposure occurred to someone working in the field where spot applications occurred. If the proposed deletion is implemented, then the required recordkeeping information for spot applications will be the same as that for other applications. See the Federal Register Notice for the proposed specific language.

A law suit was filed to clarify certain portions of the regulations and to ensure consistency with the objectives of the Food, Agricultural, Conservation and Trade Act of 1990 (the 1990 Farm Bill).

This is an attempt to provide rule coverage to all situations where exposure to a federally restricted use pesticide occurs and which requires immediate medical treatment or first aid.

If a request is made for access to the records an applicator must provide the requested information whether or not the information has yet been recorded.

This proposed change is in response to concerns that the current rule language allows a reduced penalty for good faith effort ONLY for the second and not for subsequent offenses.

D) Proposed change from 30 days to 7 days after application when the required information must be recorded.

Concern has been raised about the ability of private applicators to provide the required information to licensed health care professionals in case of, for example, a pesticide exposure medical emergency, if the information has not yet been recorded. See the Federal Register Notice for the proposed specific language.

E) Proposed clarification of providing record information when requested.

The proposed new language reads: "The information required in this section shall be recorded within seven (7) days following 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 provisions of 110.5(a) of this part."

In other words, if a request is made for access to the records an applicator must provide the requested information whether or not the information has yet been recorded.

F) Proposed rule amendment to clarify who can access records for medical treatment or medical emergency.

Proposed amended language: "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 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."

G) Proposed clarification of the release of record information by licensed health care professionals.

Proposed amended language: "A licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release 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) submit pesticide poisoning incident reports to appropriate State or Federal agencies; or 2) where consideration of medical ethics may necessitate such utilization and release."

This proposed change is in response to a) clarifying when licensed health care professionals can utilize or release record information to other health care professionals for consultation in medical treatment, b) compliance with some state mandatory reporting requirements of pesticide poisoning incidents by licensed health care professionals, and c) reducing conflicts in medical ethics in situations, for example, when the licensed health care professional deems it necessary to release the pesticide record information to appropriate count, state or federal authorities in order to remove workers from an area where pesticide exposure could be occurring.

H) Proposed changes in penalties:

The proposed changes in rule language will result in all offenses subsequent to the first offense would be subject to a fine of not less than \$1,000, 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 the regulations. See the Federal Register Notice for the specific proposed language.

This proposed change is in response to concerns that the current rule language allows a reduced penalty for good faith effort ONLY for the second and not for subsequent offenses.