

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.