

Agricultural Marketing Service, USDA

§ 110.8

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out the terms of the agreement, or, if for any reason the Administrator or State shall determine that the agreement is no longer in effect, the Administrator shall administer and enforce this part in the State.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 recordkeeping 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