

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."