



## **Farmworker Justice**

### **Submission to Study on Workers' Protection from Hazardous Substances**

**March 2018**

Farmworker Justice welcomes the U.N. Special Rapporteur on Human Rights and Hazardous Substances and Wastes' call for submissions from civil society organizations, academic organizations, and business sector representatives focused on the rights of workers and toxic chemical exposure. Farmworker Justice is a U.S. nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.

Agricultural work is one of the most dangerous occupations in the U.S. Perhaps one of the greatest hazards for the health of farmworkers, their families and their communities is exposure to pesticides. Farmworkers have one of the highest numbers of acute chemical poisonings among U.S. workers. The US Environmental Protection Agency (EPA) estimates that up to 3,000 farmworkers suffer acute pesticide poisoning every year through occupational exposures.<sup>1</sup> The numbers are likely much higher. Several factors contribute to the underestimation of the problem. Cases may never reach the health care system, due to the inability and reluctance of injured workers to get medical care. Cases may be misdiagnosed, due to the lack of training for general practitioners in occupational or environmental medicine. Even when cases reach the medical system and are properly diagnosed, there is no coordinated national pesticide incident reporting system to collect the information in one place. Studies have shown that agricultural workers suffer serious short- and long-term health effects from pesticide exposure. Yet, despite the urgent need to protect farmworkers and their families from pesticide exposure, they are afforded fewer legal protections than workers exposed to chemicals in other industrial sectors. An overview of these limited protections, as well as challenges faced for their implementation and enforcement, is detailed below.

#### Impact and Effectiveness of Existing Norms and Institutions

The U.S. Occupational Safety and Health Administration (OSHA) is the U.S. government agency tasked with ensuring safe working conditions for workers in the U.S., including the protection of workers from hazardous substances. However, the authority to regulate pesticides and their potential effects on agricultural workers is not under OSHA, but rather the EPA, which also has the principal responsibility for approving, restricting, and banning the use of agricultural

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<sup>1</sup> Environmental Protection Agency; Pesticides; Agricultural Worker Protection Standard Revisions, 80 Fed. Reg. 67502 (Nov. 2, 2015)

pesticides. Unfortunately, the EPA's standards and decisions have historically been more responsive to the demands of pesticide manufacturers and agribusiness than to the safety and health concerns of farmworkers and their families.

The EPA recently revised two important worker protection regulations related to the use of pesticides: the Agricultural Worker Protection Standard (WPS) and the Certification of Pesticide Applicators (CPA) rule.<sup>2</sup> The WPS provides basic workplace protections to agricultural workers to minimize the adverse health effects of pesticide exposure. The EPA finalized key revisions to the WPS in 2015 after a decades-long, multi-stakeholder process. The WPS calls for basic preventive measures that include annual worker safety training, direct and timely access to pesticide application information (the use, location, and hazards of specific pesticides), the basic right to a designated representative who can access pesticide application information on a worker's behalf, a minimum age of 18 to prohibit children from applying pesticides, protection from drifting pesticides, anti-retaliation protections and emergency medical assistance.

However, in response to demands from agribusiness groups, the EPA recently announced that it will begin a new rule-making process to roll back important provisions of this rule.<sup>3</sup> The key provisions that are now under threat include a minimum age of 18 for handling pesticides, the right to a representative that can access pesticide exposure information, and safety measures to prevent exposure to bystanders during pesticide applications. Enforcement of the WPS is under the authority of state departments of agriculture in most states. This enforcement scheme presents potential conflicts of interest for state agencies whose mission is to promote agribusiness in their state and whose perceived constituency is agricultural employers.

The EPA also recently modified its Certification of Pesticide Applicators (CPA) rule, updating the licensing and training requirements for applicators of restricted use pesticides (RUPs), which are some of the most toxic and dangerous pesticides available. This was the most significant revision of the rule since the rule's initial implementation over 40 years ago. The revised CPA rule enhances applicator competency standards, establishes a minimum age of 18 for pesticide applicators, requires adequate training and supervision of non-certified pesticide applicators, and improves the quality of information that workers receive about the pesticides that they apply. The revised rule had an original implementation date of March 2017, but in May 2017, EPA announced that it would delay the implementation of the revised CPA rule until May 2018.<sup>4</sup> The EPA also announced plans to reopen rulemaking on the provisions in the CPA rule which protect children from applying the most toxic pesticides.<sup>5</sup>

Additionally, the EPA is responsible for conducting health risk assessments as part of its authority to regulate pesticides, and may ban a specific pesticide in cases where there is no safe use. Recent decisions regarding various organophosphate pesticides, however, have shown that the agency's procedures do not adequately address the particular risks borne by farmworkers and their families. For example, the EPA recently ordered that chlorpyrifos, a pesticide linked to

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<sup>2</sup> 40 CFR Parts 170 and 171

<sup>3</sup> Environmental Protection Agency; Pesticides; Pesticides; Agricultural Worker Protection Standard; Reconsideration of Several Requirements and Notice About Compliance Dates; 82 Fed. Reg. 60576 (Dec. 21, 2017).

<sup>4</sup> A Federal court recently struck down these delays as unlawful and ruled that the rule was effective immediately.

<sup>5</sup> Environmental Protection Agency; Pesticides; Certification of Pesticide Applicators Rule; Reconsideration of the Minimum Age Requirements; 82 Fed. Reg. 60195 (Dec. 19, 2017).

neurodevelopmental disorders in children and acute poisonings of farmworkers, can continue to be used in agriculture, overruling the clear recommendation of its own staff without citing any compelling contrary evidence.<sup>6</sup> The EPA also failed to consider, among other things, the full extent of exposure for farmworker communities, including the length of exposure throughout the workday and the potential for exposure through drift, volatilization and/or take-home residue.<sup>7</sup>

### Challenges Faced by Particularly Vulnerable Groups

Farmworkers and their families, one of the groups most affected by pesticide exposure in the U.S., are also a particularly vulnerable group. According to the most recent data available from the U.S. Department of Labor (DOL), approximately 80% of U.S. farmworkers are Latino. The vast majority (68%) of them are migrants from Mexico.<sup>8</sup> Almost half of all farmworkers (47%) lack legal work authorization - though this figure is likely an underestimate. Additionally, only one out of every four farmworkers reports being able to speak English well.<sup>9</sup> Spanish tends to be the dominant language, though there are also farmworkers from countries where languages other than Spanish are spoken, such as Haiti. There are also increasing numbers of migrant farmworkers arriving in the U.S. from indigenous communities in Mexico and Guatemala.

Poverty is persistent in farmworker communities. Most farmworkers earn low annual incomes due to low wages, high incidences of wage theft, and the seasonal nature of their work. Thirty percent of farmworker families have an annual income below the U.S. federal poverty level.<sup>10</sup> Additionally, few farmworkers receive fringe benefits. While low-income U.S. citizens and long-term legal permanent residents may be eligible for public benefits like food stamps and Medicaid, undocumented and recently documented immigrants (with limited exceptions) are ineligible for most public benefits.

Approximately 60% of U.S. farmworkers have children, and the average farmworker parent has two minor children living at home.<sup>11</sup> Farmworker children are especially susceptible to pesticide poisoning as exposing immature, developing systems to pesticides can do long-term harm. Researchers have found a dose-effect relationship demonstrating that cognitive deficits are associated with increased years of childhood exposure to organophosphate pesticides.<sup>12</sup> This is why the worker protection rules' minimum age protections are so crucial. In fact, other federal rules on child labor set the minimum age for high-hazard work at 18, and several states prohibit minors under 18 from handling pesticides, while at least half the states in the U.S. require a minimum age of 18 for a commercial pesticide applicator's license. This should be a national standard for children in agriculture.

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<sup>6</sup> See Lipton, Eric. "E.P.A. Chief, Rejecting Agency's Science, Chooses Not to Ban Insecticide." *New York Times*, March 29, 2017. <https://www.nytimes.com/2017/03/29/us/politics/epa-insecticide-chlorpyrifos.html>

<sup>7</sup> See Earthjustice, Farmworker Justice et al., Farmworker and Conservation Comments on Chlorpyrifos Revised Human Health Risk Assessment, (Apr. 30, 2015).

<sup>8</sup> U.S. Department of Labor, Employment and Training Administration, Findings from the National Agricultural Workers Survey (NAWS) 2013-2014. Published Dec. 2016. Available at [https://www.doleta.gov/agworker/pdf/NAWS\\_Research\\_Report\\_12\\_Final\\_508\\_Compliant.pdf](https://www.doleta.gov/agworker/pdf/NAWS_Research_Report_12_Final_508_Compliant.pdf).

<sup>9</sup> IBID.

<sup>10</sup> IBID.

<sup>11</sup> IBID.

<sup>12</sup> Abdel Rasoul GM1, Abou Salem ME, Mechael AA, Hendy OM, Rohlman DS, and Ismail AA (2008). Effects of occupational pesticide exposure on children applying pesticides. *Neurotoxicology* 29(5):833-8.

## Rights of Workers to Access Information

The WPS requires employers to inform workers about where and when pesticides were sprayed to avoid accidental exposures. Information about each pesticide and application must be posted in an easily accessible central location. The WPS also allows workers to designate a representative to obtain this same information on their behalf.<sup>13</sup> This provision, known as the “designated representative” provision, is critically important to the health and safety of farmworkers and their families. The designated representative is simply standing in the place of the worker at the worker’s request, as the worker may need the assistance of a coworker, spouse, union representative, social worker, or attorney to obtain information necessary for medical treatment, worker’s compensation, or exercise of legal rights. Moreover, in order to prevent injury or illness, the worker should have the right to information about the recommended engineering, administrative and work practice controls to prevent harm, as well as the recommended personal protective equipment. Non-English-speaking farmworkers have difficulty understanding pesticide information, including labels and Safety Data Sheets, that are not available in a language they speak (such as Spanish or Haitian Creole). It is possible that the worker might be illiterate in his/her native language and needs a representative to obtain and explain the information, even if it is available. If a worker is incapacitated or unable to access these records, s/he should be able to designate a representative to obtain detailed information about what s/he was exposed to and the circumstances of that exposure.

For non-agricultural workers, the OSHA Hazard Communication Standard<sup>14</sup> provides to workers a right of access to information and training about the ingredients, hazards, protective measures, first aid, emergency response and other information about any and all substances to which they are potentially exposed. Another OSHA standard provides a right of access to relevant exposure and medical records to workers and their designated representatives<sup>15</sup>. Denying access to such information to a designated representative hinders worker’s ability to prevent harm and may also delay medical treatment, potentially adding more to healthcare costs.

On a larger level, members of the public also lack detailed information about the amount and location of pesticides applied in the U.S. Pesticide use reporting information would enhance the sparse data that currently exists about the specific pesticides to which workers and their families are exposed. Such information on a national level would allow the EPA and health researchers to identify risks to human health and the environment. With accurate information on the pesticides that farmworkers and their families are exposed to, health researchers and regulators could improve research models to understand the relationship between exposure and illness. Such information would help to improve pesticide regulation enforcement and worker protections and produce data to improve the EPA’s decisions about pesticides.

## Protection of Whistleblowers and Access to Justice

Another challenge for farmworker occupational health and safety is widespread underreporting, not just of pesticide incidents, but of other unsafe workplace conditions. As noted

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<sup>13</sup> 40 CFR §170.311(b)(9)

<sup>14</sup> 29 CFR §1910.1200

<sup>15</sup> 29 CFR §1910.1020

above, the WPS contains an anti-retaliation provision. However, in spite of this provision, agricultural workers may be hesitant to come forward to report incidents because they fear retaliation, including but not limited to, possible immigration enforcement. Workers also may not relate any health issues they are experiencing with pesticides because they have not been adequately trained on the causes and symptoms of pesticide poisoning. This hesitancy combined with a lack of adequate training for workers allows dangerous conditions to remain unaddressed and proliferate,<sup>16</sup> ultimately resulting in a higher incidence of injuries and deaths.

Agricultural workers also face many obstacles when seeking medical care for pesticide-related illness, including language barriers, lack of access to medical care, lack of information about workplace hazards, and lack of awareness of poisoning symptoms.<sup>17</sup> Lack of access to legal services also plays a role. Restrictions on the provision of legal services such as the requirement that federally funded legal services organizations only serve authorized immigrants, as well as farmworkers' limited economic resources, mean that many farmworkers are unable to access the legal services they need in order to fully exercise their rights if they suffer pesticide poisoning or other work-related injuries.

### Proposals for Reform

The U.S. government should demand better information about farmworkers' pesticide exposures and implement stronger protections for workers and their families. The EPA must comply with its legal duty to protect agricultural communities and the public from unreasonable harm from pesticides, and should move forward to ensure that worker protection rules are implemented in a timely manner, adequately enforced, and that remaining agricultural uses of chlorpyrifos are cancelled. Additionally, the implementation and enforcement of worker safety standards for pesticides in agriculture should be shifted from state departments of agriculture to state health, labor, or environmental agencies. The methods for evaluating the safety of agricultural pesticides to which farmworkers are exposed should be strengthened, which should result in the elimination of certain pesticides and more stringent precautions against workers' exposure. Finally, pesticide use and illness incident reporting should be required on a national level. Such information is necessary to make important decisions regarding medical treatment, public health, and pesticide regulation.

Farmworker Justice

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<sup>16</sup> See U.S. Gen. Accounting Office, *Pesticides on Farms: Limited Capability Exists to Monitor Occupational Illnesses and Injuries* (1993) and Geoffrey M. Calvert et. al., *Acute Pesticide Poisoning Among Agricultural Workers in the United States*, 51 AM.J. INDUS. MED 883, 894-95 (2008).

<sup>17</sup> See Earthjustice, *Annotated Bibliography: Underreporting of Agricultural Pesticide Illness and Injury* (Dec. 12, 2013).