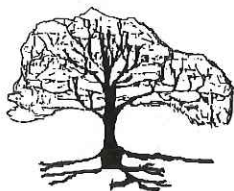


COMITE DE APOYO A LOS TRABAJADORES AGRICOLAS  
FARMWORKERS SUPPORT COMMITTEE

**C.A.T.A.**



P.O. Box 510  
4 S. Delsea Dr.  
Glassboro, NJ 08028  
Tel: 856-881-2507  
Fax: 856-881-2027  
catanj@aol.com  
www.cata-farmworkers.org

66 Atlantic St.  
Bridgeton, NJ 08302  
Tel: 856-575-5511

220 Birch St.  
P.O. Box 246  
Kennett Square, PA 19348  
Tel: 610-444-9696

116-118  
Plaza  
Salisbury, MD 21801  
Phone:  
Fax: 410-572-5999

P.O. Box 4362  
Salisbury, MD 21803-4362

## Policy Brief: Proposed Changes to the WPS

On February 20, 2014, the U.S. Environmental Protection Agency (EPA) announced proposed changes to the Worker Protection Standard (WPS). After twenty years since the enactment of the WPS, revisions to the standard are imperative for the well-being of farmworkers and for anyone who depends on the fruits of their labor. This proposed rule is ostensibly devised to increase protection for the nation's nearly two million farmworkers and their families from the occupational hazards of pesticide exposure. We believe that the best method of risk reduction is to mitigate and eliminate pesticide usage in agriculture. More support should be given to organic farming, Integrated Pest Management programs and other traditional agricultural techniques to help farmers transition to organic farming. Phasing out the use of pesticides will not only benefit farmworkers, but will improve the health of farmers, consumers, and the natural environment as well.

While most workers in the U.S. are protected by the standards of the Occupational Safety and Health Administration (OSHA) from exposure to hazardous chemicals, farmworkers are not eligible for protection under these rules. The Worker Protection Standard is the primary set of federal regulations aimed at reducing the risk of pesticide poisonings and injuries among agricultural workers.<sup>1</sup> Administered by the EPA, the WPS requires agricultural establishments that grow and harvest for commercial production to comply with safety measures such as pesticide safety training for farmworkers, notification of pesticide applications, and emergency medical assistance. Yet protections to workers afforded by the WPS are fundamentally inadequate. In fact, the EPA admitted that even when there is full compliance with the WPS, "risks to workers still exceed EPA's level of concern."<sup>1</sup>

Even more troubling than weak regulation, CATA has found that most agricultural establishments are not in compliance with the WPS. During the first four years of WPS implementation, CATA and the Farmworker Health and Safety Institute documented employer compliance in New Jersey in a report entitled, "Farmworkers at Risk." The study demonstrates that the vast majority of workers interviewed were not adequately trained according to the WPS, did not receive pertinent information on pesticides used and were not informed about the re-entry time after an area had been sprayed.<sup>1</sup>

Twenty years later CATA organizers consistently see the same widespread incompliance and lack of enforcement. Last year Farmworker Justice, issued a report entitled "Exposed and Ignored" on how pesticide exposure compounds and further exacerbates the troubles associated with an occupation in which 60% of America's 2.5 million farmworkers and farmworker families live in poverty.<sup>1</sup> In sum, weak regulation coupled with a general lack of enforcement exclude farmworkers from receiving the same protections as other workforces.



There are an estimated 1.1 billion pounds of pesticides applied to crops each year<sup>i</sup>, and farmworkers across the country experience the effects of acute and chronic pesticide poisoning.<sup>ii</sup> Exposure to pesticides causes farmworkers to suffer more chemical related injuries and illnesses than any other workforce nationwide.<sup>iii</sup> According to the EPA, every year 20,000 farmworkers are exposed to acute pesticide poisoning in their workplaces.<sup>iv</sup> Because of the problem of underreporting, that number is certainly higher.

Considering the vulnerability of farmworkers it is paramount that meaningful regulations be backed by strong enforcement. We have identified the proposed changes that we do not agree with and provide the following recommendations:

***EPA'S GOAL: "...TO PREVENT UNREASONABLE ADVERSE EFFECTS FROM EXPOSURE TO PESTICIDES AMONG AGRICULTURAL WORKERS AND PESTICIDE HANDLERS; VULNERABLE GROUPS, SUCH AS MINORITY AND LOW-INCOME POPULATIONS, CHILD FARMWORKERS, AND FARMWORKER FAMILIES; AND GENERAL PUBLIC."***

1. The proposed removal of the central display requirement for posting application-specific information will force farmworkers and their representatives to submit requests to employers. Deprived of a means of obtaining immediate information without employers' awareness, farmworkers will be dissuaded from obtaining essential information in non-emergency situations for risk of retaliation. More central displays should be made available, not less.
2. According to the proposed rule, field warning signs will be required to be posted only for treated areas when Restricted-Entry Interval (REI) is greater than 48 hours. Regardless of the timeframe, field warning signs should be posted for all REIs due to their composition of dangerous toxic compounds and their harmful effect to the human body.
3. Sixteen is not an acceptable minimum age for handlers or early entry workers. Executive Order: 13045 requires federal agencies to identify and assess environmental health risks that may disproportionately affect children.<sup>v</sup> This minimum age requirement does not adequately protect children. The minimum age should be at least 18.
4. Mandatory training verification is essential for any kind of enforcement. Based on our experiences a wallet-sized verification card, similar to the current voluntary verification card system, works best in the field. Farmworkers are more likely to hold on to the cards, as they would with a license. The cards are less likely to be forged if it is to be issued by the EPA on an annual basis, and assuming that the card is sophisticated enough not to be forged. The EPA is considering this alternative option in the proposed rule because it facilitates enforcement in practice.
5. Buffers of 25-100ft for entry-restricted areas during pesticide application will offer slight protection to farmworkers from pesticide overspray and fumes. Still, the size of the area is small and inadequate and we believe that a buffer of 100 feet should be the minimum.
6. Early entry worker exceptions such as "limited contact" and "irrigation exceptions" would create loopholes in the proposed rule. No farmworker should be subjected to the poisonous toxins associated with early entry conditions and these exceptions should be eliminated.



We recognize the following improvements to the rule:

1. Requiring safety training each year, rather than every five years, is an important improvement, along with requiring additional content on reducing "take-home exposures;" how to report violations to state enforcement agencies; and information about an employer's obligation under the law.
2. Maintaining and "making available" application-specific information, labeling and Safety Data Sheets (SDS) for two years will provide workers somewhat better access to pertinent information on pesticides used. Since the pesticide-specific hazard communication material is not available immediately, the burden will be placed on the worker, advocate or healthcare provider to obtain or request this information in non-emergency situations.
3. The additional application items to be recorded include the specific crop or site treated, the start and end times, and the end date for the restricted entry interval (REI). While the additional application items are valuable pieces of information when made available, they should be verified to correspond to realities in the fields and not forged.
4. The adoption of the OSHA standard for respirators, including medical evaluation, fit test, and training is a step in the right direction, but it is not enough. Handlers will remain unprotected because the EPA is not adding the requirement from the OSHA standard that details worksite specific respiratory protection program to address the manner in which respirators are properly selected, cleaned, stored, repaired, and replaced in accordance to the type of chemical and level of exposure. Medical evaluation is necessary for all types of respirators because they create breathing resistance and increase heat stress risk. Agricultural employers must be held responsible for personal protective equipment (PPE) as are employers in other industries.

It is important to note that root-cause problems of farmworker's occupational exposure to pesticides will not be remedied with the proposed rule. The current structure of the EPA does not have the capacity to enforce current or proposed regulations. Under the current circumstances, we cannot be assured that training is adequate, that pesticide specific information is readily available, that special protection for pesticide handlers exists, and that there is enforcement of the standard at the state level.

In order for the proposed changes to be effective, responsible government agencies must have the capacity to enforce meaningful regulations and employers must also be held accountable for their actions. We therefore provide the following suggestions for additions for the proposed rule:

1. Funds must be channeled to the enforcement agencies so that a sufficient number of inspectors can be hired.
2. Inspectors must be bilingual and be able to speak Spanish and Creole.
3. There should be an increase in the number of surprise and random inspections at the farms.
4. State inspection agencies should have a toll-free number that workers can call.
5. There should be more government programs that offer assistance to farmers regarding the WPS.
6. Enforcement agencies should work closely with community-based farmworker organizations in ensuring farmworker safety.
7. Fines should be raised in order to discourage incompliance.
8. The WPS trainings for farmworkers should be conducted by people who are properly trained and speak the language of farmworkers, especially Spanish and Creole.
9. Responsible enforcement agencies should work together to ensure that farmworkers have access to sanitary facilities and improved farmworker housing.

10. Government initiatives should support the allocation of monies for epidemiological studies that investigate these farmworker occupational health hazards.

On March 19, the Notice of Proposed Rulemaking was published in the Federal Register, indicating the beginning of a public comment period which lasts until August 18. This period is the momentous occasion to carefully review the proposed changes in context of the lessons learned from current rule and practice. Join us in our struggle for farmworker health and safety.

## References

<sup>i</sup> See U.S. Environmental Protection Agency. (2011, Feb. 17) Pesticide News Story: EPA Releases Report Containing Latest Estimates of Pesticide Use in the United States. Retrieved from [http://epa.gov/oppfead1/cb/csb\\_page/updates/2011/sales-usage06-07.html](http://epa.gov/oppfead1/cb/csb_page/updates/2011/sales-usage06-07.html)

<sup>ii</sup> See U.S. Environmental Protection Agency. (2011, Feb. 17) Pesticide News Story: EPA Releases Report Containing Latest Estimates of Pesticide Use in the United States. Retrieved from [http://epa.gov/oppfead1/cb/csb\\_page/updates/2011/sales-usage06-07.html](http://epa.gov/oppfead1/cb/csb_page/updates/2011/sales-usage06-07.html)

<sup>iii</sup> Calvert, G.M., Karnik, J., Mehler, L., Beckman, J., Morrissey, B., Sievert, J., Barrett, R., Lackovic, M., Mabee, L., Schwartz, A., Mitchell Y., & Moraga-McHaley, S. (2008). Acute pesticide poisoning among agricultural workers in the United States, 1998-2005. *American Journal of Industrial Medicine*, 51(12), 883-898; Donohoe, M. & Hansen, E. (2003). Health issues of migrant and seasonal farmworkers. *Journal of Health Care for the Poor and Underserved*, 14(2), 153-164.

<sup>iv</sup> U.S. EPA. (1992). *Regulatory impact analysis of Worker Protection Standard for agricultural pesticides*. Washington, DC: U.S. Environmental Protection Agency, Office of Pesticide Programs.

<sup>v</sup> See Executive Order: 13045