



VIA ELECTRONIC SUBMISSION

April 18, 2016

OSHA Docket Office  
OSHA Docket No. OSHA-2012-0026  
U.S. Department of Labor  
Occupational Safety and Health Administration  
200 Constitution Avenue, NW, Room N-2625  
Washington, DC 20210

Re: Regulations containing procedures for handling of retaliation complaints; revision of approved information collection (paperwork) requirements for Office of Management and Budget (OMB) approval request for public comments; Docket No. OSHA-2012-0026

To whom it may concern,

Farmworker Justice submits these comments in response to the Occupational Safety and Health Administration's (OSHA) request for public comments on the regulations containing procedures for handling of retaliation complaints. We support OSHA's work to investigate complaints from whistleblowers who report safety violations in the workplace. We believe that whistleblower complaints must be properly investigated in order to ensure proper enforcement of health and safety laws and to encourage workers to report violations to the appropriate authorities.

Farmworker Justice (FJ) is a national advocacy organization that empowers farmworkers to improve their working conditions, immigration status, health, occupational safety, and access to justice. FJ works with migrant and community health centers, farmworker community-based organizations, and farmworker advocates, among other groups and individuals to improve farmworkers' health and safety and to ensure greater access to health care.

The 2013 Survey of Occupational Injuries and Illnesses conducted by the U.S. Bureau of Labor Statistics reported that crop production is one of the most hazardous industries in the U.S., with workers suffering non-fatal occupational injuries at a rate of 5.5 per 100 full-time workers. The average rate for non-fatal occupational injuries for nonagricultural work is 3.3 per 100 full-time workers.<sup>1</sup>

Even though farmworkers work in hazardous conditions, they are often reluctant to report health and safety violations to government authorities or to even raise these issues with their employers. This

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<sup>1</sup> Dept. of Labor, *Bureau of Labor Statistics, Employer-reported workplace injuries and illnesses- 2013* (Dec. 4, 2013), available at [http://www.bls.gov/news.release/archives/osh\\_12042014.pdf](http://www.bls.gov/news.release/archives/osh_12042014.pdf)

occurs due to a variety of factors. For example, 76% of farmworkers are Hispanic and Spanish is their predominant language.<sup>2</sup> Language barriers play a large role in preventing them from asserting their rights in the workplace or even knowing what their rights are. We also note that most farmworkers (54%) have primary school levels of education and many farmworkers do not know how to read or write in English or their native language. Additionally, farmworkers' immigration status negatively influences their ability to protect themselves at work. The vast majority of farmworkers are immigrants.<sup>3</sup> Half of farmworkers are undocumented immigrants and many farmworkers have mixed-status families. A significant number of farmworkers are in the U.S. with H-2A temporary work visas, which tie their stay and employment in the U.S. with one employer. They have justifiable fears that asserting their right to a safe workplace will endanger their jobs or ability to return to the U.S.<sup>4</sup>

For the reasons stated above, FJ supports OSHA's proposal to revise the Information Collection Request (ICR) to include a new form in both paper and electronic form. This new form will provide additional methods for employees, who may be otherwise reluctant to do so, to submit complaints of retaliation directly to OSHA within the statutory filing deadlines. This form will provide workers with an additional method of filing complaints and provide a level of uniformity to the complaint and information collection process. However, we urge OSHA to provide this form in Spanish and other languages commonly spoken by low-wage immigrant workers. Farmworkers should be able to report safety and health violations in their dominant language, instead of only English.

We support OSHA's decision to retain an employee's ability to file an oral complaint. Many farmworkers prefer oral communication due to limited English proficiency and formal education levels. Since farmworkers tend to live and work in isolated, rural areas with limited internet and computer access, it is important not to overly rely on technology to receive whistleblower complaints. However, in order to make oral complaints a viable option for farmworkers and other low-wage immigrant workers, OSHA must hire more bilingual staff with the linguistic and cultural competency to receive and investigate such complaints.

Thank you for this opportunity to comment on OSHA's proposed revisions to the procedures for handling retaliation complaints. If you have any questions, please contact Mul Kim at [mul.kim@farmworkerjustice.org](mailto:mul.kim@farmworkerjustice.org).

Sincerely,

Mul Kim  
Health Policy Attorney

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<sup>2</sup> Farmworker Justice, *Selected Statistics on Farmworkers* (2014), available at <http://www.farmworkerjustice.org/sites/default/files/NAWS%20data%20factsht%201-13-15FINAL.pdf>

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Dept. of Labor, *NAWS: Education level* (1999-2010), available at <https://naws.jbsinternational.com/2/2edlevel.php>