



January 2021

# FARMWORKERS

## Additional Information Needed to Better Protect Workers from Pesticide Exposure

Accessible Version



A Century of Non-Partisan Fact-Based Work

## FARMWORKERS

### Additional Information Needed to Better Protect Workers from Pesticide Exposure

#### Why GAO Did This Study

The use of pesticides contributes to U.S. agricultural productivity by protecting crops against pests or weeds, but this use may pose risks to human health. To reduce the consequences of pesticide exposure to farmworkers' health, EPA revised the WPS in 2015 to include a provision that allows a farmworker to identify a person who can request, for their benefit, certain pesticide information from their employer—this is called the designated representative provision.

This report examines (1) what is known about the extent of use and effect of the designated representative provision on the availability of pesticide information and (2) what is known about any misuse of information obtained through the provision.

GAO reviewed laws, regulations, and guidance, and interviewed officials from EPA and 13 selected states about how they implement and oversee compliance with the standard. GAO also interviewed stakeholders, such as farmer groups and farmworker advocacy groups.

#### What GAO Recommends

GAO is making two recommendations to EPA to (1) coordinate with states to collect information on the use of the designated representative provision and (2) take steps to explain, in guidance, on its website, or through another mechanism, the agency's expectations about appropriate use of pesticide information obtained by a designated representative and describe potential misuse of such information. EPA agreed, in part, to both recommendations.

View [GAO-21-63](#). For more information, contact Steve D. Morris at (202) 512-3841 or [morriss@gao.gov](mailto:morriss@gao.gov).

#### What GAO Found

The U.S. Environmental Protection Agency (EPA) and states ensure compliance with the Agricultural Worker Protection Standard (WPS) primarily through inspections of farms. The states collect some information—such as the number of inspections they conduct—and provide that information to EPA as part of cooperative agreements between EPA and the states. The extent of use of the designated representative provision of the WPS, and its effect on the availability of pesticide information, are not known because EPA does not collect information on the use of the provision and does not coordinate with states to do so. EPA's guidance to states for conducting inspections encourages, but does not require, state inspectors to ask farmers and farmworkers about whether a designated representative has been used. EPA officials said that the agency has not asked states to collect information on the provision because the agency has focused on compliance with other aspects of the WPS. By coordinating with states, through the cooperative agreements or some another mechanism, to collect information on the use of the designated representative provision, EPA would be better positioned to determine whether the provision is serving its intended purpose.

Some stakeholders have raised concerns about potential misuse of pesticide information, such as other farmers using the information obtained by a designated representative to gain a competitive advantage. However, EPA officials, state officials, and stakeholders told us they did not know of any instance in which a person serving as a designated representative misused the pesticide information obtained from farmers. Neither EPA's guidance nor its website explain the agency's expectations for appropriate use or describe how such information could be misused. EPA officials said that the agency has not explained what constitutes misuse. By explaining, in the agency's guidance, on its website, or through another mechanism, EPA's expectations about appropriate use of pesticide information obtained by designated representatives, including the misuse of such information, the agency could ensure designated representatives understand the importance of the information in reducing the consequences of pesticide exposure.

Farmworkers Picking Strawberries at a Farm



Source: U.S. Department of Agriculture. | GAO-21-63

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### Abbreviations

EPA	Environmental Protection Agency
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
WPS	Agricultural Worker Protection Standard

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January 15, 2021

Chair  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable David Scott  
Chair  
The Honorable Glenn Thompson  
Ranking Member  
Committee on Agriculture  
House of Representatives

The Environmental Protection Agency's (EPA) Agricultural Worker Protection Standard (WPS) aims to reduce the risks of illness or injury resulting from pesticide exposure among farmworkers and others on or near farms.<sup>1</sup> The WPS covers more than 2 million farmworkers at more than 600,000 farms, according to EPA.<sup>2</sup> In December 2017, EPA announced a possible revision to the provision in the WPS that directs farmers to provide information about pesticides applied on their farms and the hazards of those pesticides to a designated representative (i.e., a person a farmworker has designated as his or her representative).<sup>3</sup> Before announcing the possible revision, EPA had sought input on regulations that might be appropriate for repeal, replacement, or

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<sup>1</sup>A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. The term pesticide also applies to herbicides, fungicides, and various other substances used to control pests.

<sup>2</sup>For the purpose of this review, "farms" includes any agricultural establishment such as farming operations, forest operations, plant nurseries, or other such establishments where pesticides are applied. "Farmworkers" includes any persons working in crop production agriculture where pesticides are applied, including agricultural workers—who perform hand-labor tasks in crops treated by pesticides, such as harvesting, thinning, and pruning—and pesticide handlers, who mix, load and apply pesticides. Additional regulations also cover pesticide handlers. Additionally, "farmers" includes anyone who employs farmworkers.

<sup>3</sup>82 Fed. Reg. 60,576 (Dec. 21, 2017). According to this notice of proposed rulemaking, EPA initiated a rulemaking process to consider revising certain requirements in the WPS, including the designated representative provision, and expected to issue a further notice of proposed rulemaking to solicit public input on proposed revisions to WPS.

modification, consistent with an executive order.<sup>4</sup> During the comment period and at a November 2017 meeting of a federal advisory committee on pesticides, individuals and groups representing farmer and farmworker interests said the designated representative provision would help farmworkers obtain pesticide information (i.e., information about pesticide applications and hazards) important for their health and safety.<sup>5</sup> Those representing farmer interests also raised concerns about potential misuse of the provision, such as other farmers using the information obtained by a designated representative to gain a competitive advantage. In March 2019, the Pesticide Registration Improvement Extension Act of 2018 directed EPA to implement the designated representative provision without revision until October 2021.<sup>6</sup>

EPA revised the WPS in 2015 to strengthen elements of the existing regulation, with the goal of enhancing protections for farmworkers.<sup>7</sup> The revised WPS increased farmworker protections from pesticide exposure by providing health protections similar to those in place for workers in other industries. For example, the Occupational Safety and Health Administration's (OSHA) hazard communication standard provides for employees in non-agricultural settings to obtain information about the hazards of chemicals to which they were exposed, through a designated representative.<sup>8</sup>

EPA's 2015 economic analysis, conducted as part of the rulemaking process, states that in the case of farmworker exposure to a pesticide,

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<sup>4</sup>82 Fed. Reg. 17,793 (Apr. 13, 2017). According to EPA's request for comment, EPA issued the request in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda," and was seeking input on regulations that might be appropriate for repeal, replacement, or modification.

<sup>5</sup>U.S. Environmental Protection Agency, Office of Pesticide Programs, *Pesticide Program Dialogue Committee Meeting*, accessed July 28, 2020, <https://www.epa.gov/sites/production/files/2018-01/documents/november-2-2017-ppdc-meeting-transcript.pdf>. The committee discussed the designated representative at a meeting in May and November 2017.

<sup>6</sup>Pub. L. No. 116-8, § 7, 133 Stat. 484, 578 (2019).

<sup>7</sup>80 Fed. Reg. 67,496, (Nov. 2, 2015). EPA established the WPS in 1974 to provide protection for farmworkers exposed to pesticides. 39 Fed. Reg. 16,888 (May 10, 1974). EPA first revised the WPS in 1992 after an agency review concluded that the standard was inadequate to protect farmworkers. 57 Fed. Reg. 38,102 (Aug. 21, 1992).

<sup>8</sup>See 29 C.F.R. § 1910.1200. OSHA promulgated its original Hazard Communication rule, which included its designated representative provision, on November 25, 1983.

information on a pesticide's hazards can be critical and expedite the diagnosis of an illness.<sup>9</sup> A pesticide's hazard information can be found on its safety data sheet.<sup>10</sup> EPA intended the designated representative provision to make this information more accessible to farmworkers. The revised WPS also requires farmers to provide farmworkers with annual pesticide safety training, supplies such as soap and water so farmworkers can decontaminate themselves if exposed to pesticides, and transportation to a medical facility if they are poisoned or injured by a pesticide. EPA and state agencies work together to ensure farmer compliance with the WPS. Generally, states inspect farms and EPA provides guidance and financial support. EPA negotiates cooperative agreement work plans with each state annually to specify the number of inspections the state will conduct, and EPA provides about \$24 million each year to the states to support state inspection activities.

The Pesticide Registration Improvement Extension Act of 2018 includes a provision for us to conduct a study of the use of the designated representative provision.<sup>11</sup> This report examines (1) what is known about the extent of use of the designated representative provision and its effect on the availability of pesticide information, and (2) what is known about any misuse of information obtained through the designated representative provision. In addition, we obtained stakeholder perspectives about potential misuse of this information and their suggestions for how EPA and states could prevent such misuse. For additional information on these stakeholder perspectives about potential misuse, see Appendix II.

To address both objectives, we reviewed relevant federal laws and regulations. We also interviewed officials in EPA's Office of Enforcement and Compliance Assurance, which is responsible for ensuring compliance with EPA regulations, and its Office of Pesticide Programs, which is responsible for reviewing and registering pesticides and providing program guidance to states. In addition, we conducted semi-structured

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<sup>9</sup>U.S. Environmental Protection Agency, *Economic Analysis of the Agricultural Worker Protection Standard Revisions* (Washington, D.C.: September 2015).

<sup>10</sup>OSHA's Hazard Communication Standard requires that chemical manufacturers and importers, including pesticide manufacturers and importers, evaluate the chemicals they produce and import to determine their hazard potential. If a chemical presents a hazard, a safety data sheet must be developed to communicate its hazard potential to users. A pesticide's safety data sheet contains a variety of hazard information, such as symptoms expected in a person exposed to the pesticide—including immediate, delayed and chronic effects—as well as recommended treatment, among other things.

<sup>11</sup>Pub. L. No. 116-8, § 7(c).

interviews with state officials from 13 selected states to discuss how EPA and states coordinate to conduct oversight of the designated representative provision. We included in these 13 states five states that had state provisions predating the 2015 WPS provision and that allow farmworkers to use designated representatives. We selected these states based on a range of criteria.

We interviewed representatives of nine groups representing the interests of farmers, growers, and others in the agricultural industry, which we refer to as “farmer groups,” and 11 farmworker advocacy groups, which we refer to as “farmworker groups.” We refer to these 20 groups collectively as stakeholders. We identified these stakeholders based on our review of publicly available studies; documents and reports published by EPA, USDA, and relevant stakeholder groups; and interviews with previously identified stakeholders. Because this was a nonprobability sample of stakeholders, our results are not generalizable to all farmers and farmworkers but provide examples of these groups’ viewpoints. We obtained and reviewed EPA’s strategic plan, the WPS inspection manual, guidance, and other documents to determine key processes EPA is to follow for ensuring compliance with the WPS. To assess EPA’s actions to collect information about or monitor the use of the designated representative provision, we compared EPA’s efforts against federal standards for internal control related to the use of quality information.<sup>12</sup> To assess EPA’s actions to prevent misuse of information obtained through the designated representative provision, we compared EPA’s efforts against federal standards for internal control related to external communication.<sup>13</sup> For additional information about our scope and methodology, see Appendix I.

We conducted this performance audit from October 2019 to December 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>12</sup>GAO, *Standards for Internal Control in the Federal Government*. [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>13</sup>[GAO-14-704G](#).

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## Background

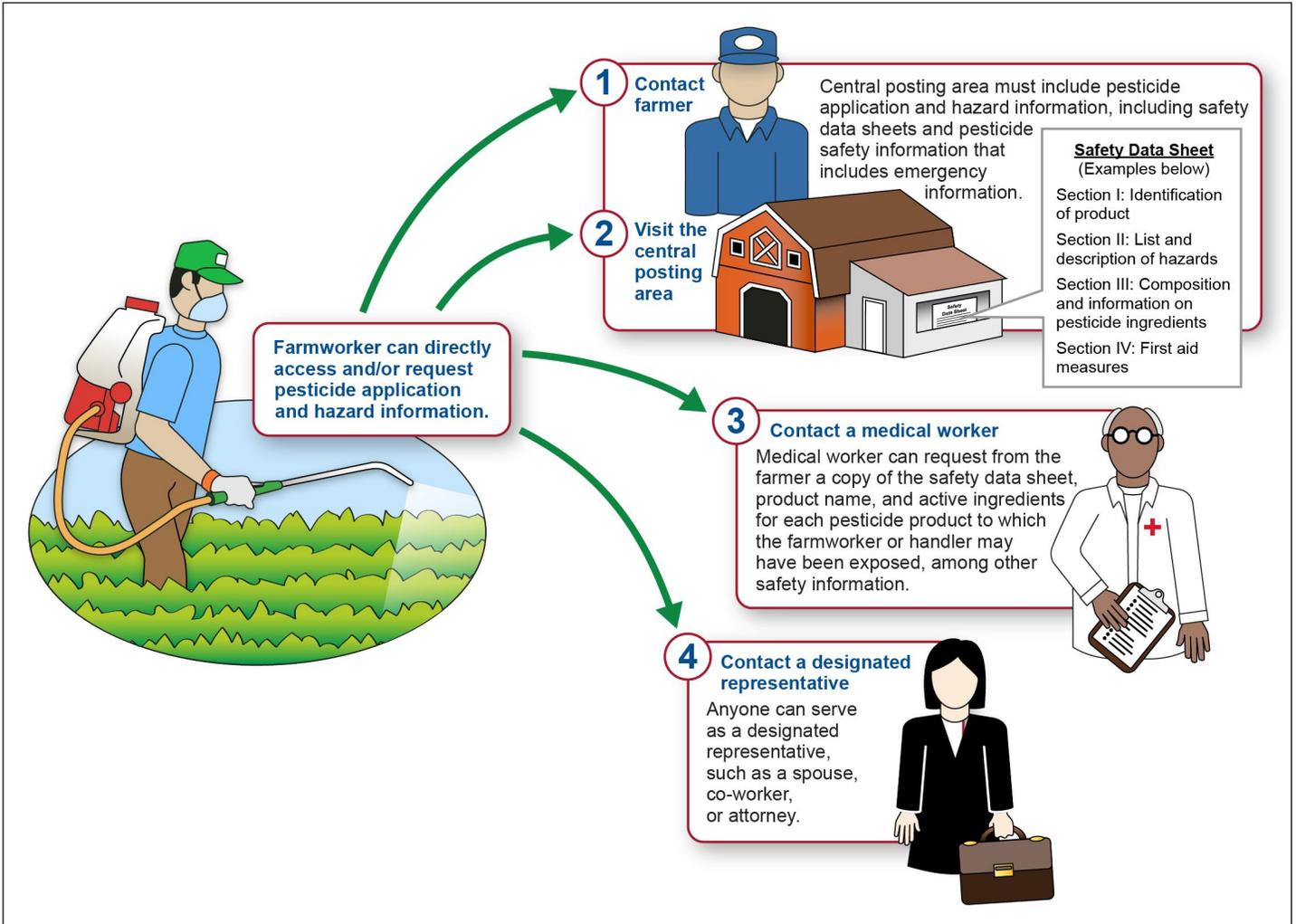
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### Risks of Pesticides and Farmworkers' Access to Information

Pesticides—chemicals or biological substances used to destroy or control weeds or unwanted insects, fungi, rodents, bacteria, and other pests—contribute significantly to agricultural productivity by preventing crop damage and to improving public health by controlling disease-carrying pests. However, these pesticides may pose risks to human health. Farmworkers may be especially at risk due to potentially high exposure to pesticides, according to EPA. Farmworkers can be exposed to pesticides in many ways, including through contact with pesticide residue (1) on or in plants, soil, tractors, application equipment, or used protective equipment; (2) that may drift through the air from nearby pesticide applications; or (3) in water used for irrigation. According to EPA's 2015 economic analysis, associations between pesticide exposures and certain cancer and non-cancer chronic health effects are well documented.

The WPS provides for a number of ways that farmworkers can obtain pesticide information, such as requirements that farmers post such information at a central location. Figure 1 illustrates the various methods in which farmworkers can access pesticide application information (i.e., which pesticides were applied) and hazard information (i.e., possible symptoms of exposure and treatment instructions in case of exposure).

**Figure 1: Various Methods in Which Farmworkers Can Access Information about Pesticide Application and Hazards under the Environmental Protection Agency's Worker Protection Standard**



Source: GAO analysis of the Environmental Protection Agency's (EPA) Worker Protection Standard. | GAO-21-63

**Text of Figure 1: Various Methods in Which Farmworkers Can Access Information about Pesticide Application and Hazards under the Environmental Protection Agency's Worker Protection Standard**

Farmworker can directly access and/or request pesticide application and hazard information.

- 1) Contact farmer
- 2) Visit the central posting area

- a) Central posting area must include pesticide application and hazard information, including safety data sheets and pesticide safety information that includes emergency information.
- b) Safety Data Sheet  
(Examples below)  
Section I: Identification of product  
Section II: List and description of hazards  
Section III: Composition and information on pesticide ingredients  
Section IV: First aid measures
- 3) Contact a medical worker  
Medical worker can request from the farmer a copy of the safety data sheet, product name, and active ingredients for each pesticide product to which the farmworker or handler may have been exposed, among other safety information.
- 4) Contact a designated representative  
Anyone can serve as a designated representative, such as a spouse, co-worker, or attorney.

Source: GAO analysis of the Environmental Protection Agency's (EPA) Worker Protection Standard. | GAO-21-63

Note: A pesticide's safety data sheet generally describes a pesticide's health hazards, such as its potential to irritate skin or cause cancer, as well as steps to take in case of exposure. For each pesticide used on a farm, the Worker Protection Standard—established by the Environmental Protection Agency—requires the farmer to post the safety data sheet at a central posting location and keep a copy of that sheet for 2 years after the pesticide is applied. EPA's Worker Protection Standard also applies to pesticide handlers.

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## Federal and State Enforcement of the Agricultural Worker Protection Standard

All states except Wyoming have primacy (primary responsibility) for enforcement of the WPS.<sup>14</sup> In each state with primacy, EPA has an oversight role to ensure the adequacy of the state's WPS compliance monitoring program. In addition, EPA provides guidance documents and outreach (such as working with farmworker groups to develop a radio

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<sup>14</sup>Under the *Federal Insecticide, Fungicide, and Rodenticide Act*, a state may have primary enforcement authority if the EPA determines that the state has adequate pesticide laws, regulations, and enforcement procedures as well as satisfactory recordkeeping and reporting. *Act of June 25, 1947*, ch. 125, § 26, *added by* Pub. L. No. 95-396, § 24(2), 92 Stat. 819, 836 (1978) (codified as amended at 7 U.S.C. § 136w-1).

campaign for pesticide safety awareness). One primary way in which states ensure farmer compliance with WPS is through inspections of farms within their jurisdictions.<sup>15</sup> These inspections are designed to ensure farmers comply with WPS requirements. As part of EPA's oversight of state enforcement activities, EPA and states negotiate annual cooperative agreements that specify how many WPS inspections the state plans to conduct. These cooperative agreements include the development of work plans that are collaborative efforts in which states and EPA document how they will coordinate on ensuring compliance with WPS. In addition, states report data and other information to EPA such as the number of inspections conducted, the types of violations found, and enforcement actions taken.

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## The Use and Effect of the Designated Representative Provision Are Unknown, and EPA Does Not Collect Data or Coordinate with States to Do So

The extent of the use of the designated representative provision and its effect on the availability of pesticide information are unknown because, among other reasons, EPA does not collect information on the use of the provision and does not coordinate with states to do so. Although EPA has not yet studied or assessed the effect of the designated representative provision, the agency plans to review available data on the impact of the entire WPS in reducing farmworkers' exposure to pesticides.

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### EPA Does Not Collect Data on the Use of the Designated Representative Provision or Coordinate with States to Do So

Officials from EPA and state agencies and almost all of the stakeholders we interviewed said they did not know how often or to what extent farmworkers have used the designated representative provision. According to EPA officials, EPA does not know about the use of the designated representative provision because the agency does not collect

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<sup>15</sup>According to EPA officials, the agency conducts inspections in Wyoming and some tribal areas.

information on farmworkers' use of the provision or whether farmers provide the information that farmworkers requested within the required 15 days.<sup>16</sup> EPA collects information from states about farmers' compliance with other aspects of the WPS, including

- the number of WPS inspections conducted;
- violations of provisions that require farmers to provide annual training;
- whether certain pesticide information is displayed at a central posting area;
- evidence that farmworker entry is restricted from pesticide-treated areas; and
- the number of inspections.

States agree to collect information about the WPS and provide that information to EPA, through its 10 regional offices, as part of the cooperative agreement work plans that EPA and states negotiate on a yearly basis. EPA can request additional information from states, but EPA officials said that the agency has not done so for the designated representative provision. The reason, according to EPA officials, is that EPA has chosen to focus on collecting information on broader indicators for the WPS. EPA officials said that requesting additional information from states is possible but may require additional review and approval from both EPA management and the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.<sup>17</sup> This process, according to EPA officials, is routine but could be time consuming because it would require EPA to justify the additional burden on states to provide information. Obtaining OMB approval for its data collection efforts is a routine part of EPA's activities as a regulatory agency. Every 5 years,

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<sup>16</sup>Information on the use of the designated representative provision is available from some farmers. For example, a farmer group we contacted found that, after sending a set of questions to more than 2,000 members, 10 of 27 respondents indicated that farmworkers at their operation had used the designated representative provision. In addition, six of seven respondents indicated that the designated representative was a coworker.

<sup>17</sup>Under the Paperwork Reduction Act, agencies must obtain OMB approval for identical collections of information from 10 or more nonfederal entities. Information collections include surveys, questionnaires, and reports. To obtain approval, agencies must provide to OMB (1) a description of the information to be collected, (2) a description of the information needed, and (3) estimates of the burden (time, effort, and financial resources) imposed on respondents. Agencies must also seek public comment on the proposed information collections and consult with those affected on ways to minimize the associated burden. Pub. L. No. 104-13, 109 Stat. 163 (codified as amended at 44 U.S.C. 3501-3521).

according to EPA officials, the agency submits its data collection instruments to OMB for approval even if the agency is not seeking changes to the instruments.<sup>18</sup> EPA officials said that having any information on use of the designated representative provision would be useful in determining whether the provision is meeting its goal of improving farmworker access to pesticide information.

Some states encourage inspectors to ask farmers and farmworkers about the use of the designated representative provision, but these states do not compile the farmers' and farmworkers' responses, maintain them in a central location, or report the information to EPA. While EPA does not require states to collect information about the designated representative provision during WPS inspections, the agency provides inspection guidance to states that encourages inspectors to ask farmers and farmworkers about the use of the provision. Specifically, EPA's inspection guidance states that the inspector should ask (1) if a designated representative has requested pesticide information, and (2) if so, whether the farmer provided the pesticide information requested within the 15-day time frame required by WPS. In addition, according to agency guidance, EPA encourages states to report enforcement actions for WPS violations because it is important to communicate to the public about the impact of WPS compliance.

Based on our analysis of state inspection forms in the 13 states in our review, seven of the states include questions related to the designated representative provision on their inspection forms, and officials from two other states were planning to revise or were considering revising their inspection forms to include questions related to the provision, consistent with EPA's inspection guidance.<sup>19</sup> These states encourage inspectors to ask about the use of the designated representative provision during a routine inspection. However, none of the seven states compile the responses inspectors receive from farmers during these inspections. These states may have information about the use of the designated

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<sup>18</sup>OMB approval for EPA's current information collection from states on WPS-related activities expires in December 2022.

<sup>19</sup>As of September 2020, officials from the remaining six states provided reasons for not having a specific question relating to the designated representative. An official from one state said that the state could collect the information about use of the designated representative provision through other means, such as after receiving a complaint about the designated representative and documenting the case in an investigation. Officials in three states expressed uncertainty as to why they should collect additional information on use of the designated representative provision if there is no known problem with the provision.

representative provision on paper or electronic forms used by inspectors but do not maintain the information in a central location. Officials from some of these seven states told us that they had not taken steps to compile the information collected through inspections or maintain information about the use of the designated representative provision because EPA does not specifically require states to do so. EPA officials said that the agency has not asked states to collect information on the designated representative provision because the agency has focused on compliance with other aspects of the WPS.

As previously described, EPA encourages inspectors to ask farmers and farmworkers about the use of the provision. In EPA's current strategic plan, the agency states that monitoring compliance is a key component of its oversight role.<sup>20</sup> To monitor compliance with the WPS, EPA uses information that it primarily obtains through inspections. For EPA's oversight of the WPS, the agency would need to obtain information—as called for by federal standards for internal control related to the use of quality information—to determine whether farmworkers are using the designated representative provision and whether farmers are providing the required information in the required time frames.<sup>21</sup> By coordinating with states, through its annual cooperative agreement work plans with states or another mechanism, to collect information on the use of the designated representative, EPA would be better positioned to determine if the designated representative provision is serving the intended purpose of increasing the availability of pesticide information to farmworkers. The collection of information on use could include consistently compiling the information obtained through inspections across states. Specifically, this information would be about whether farmworkers are using designated representatives and whether farmers are providing the information to the designated representatives within the time frames required by the WPS.

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<sup>20</sup>U.S. Environmental Protection Agency, *Working Together: FY 2018-2022 U.S. EPA Strategic Plan* (Washington, D.C.: February 2018) (Updated 2019).

<sup>21</sup>[GAO-14-704G](#). Under federal standards for internal control, management should use quality information to achieve the entity's objectives. In doing so, management obtains relevant data from reliable sources.

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## EPA Has Not Assessed the Effect of the Designated Representative Provision but Plans to Review Data on Pesticide Exposure and Effectiveness of Training

EPA has not studied or assessed the effect of the designated representative provision, specifically, but is planning to study the effect of the overall WPS on pesticide exposure trends and the effectiveness of training, according to EPA officials. EPA officials said that the agency plans to review available data on the impact (or effect) of the overall WPS on the health and safety of farmworkers and the effectiveness of training.<sup>22</sup> EPA officials said the agency would not complete this effort until 2022, in part because the requirements of the 2015 WPS did not come into effect until 2017 and the agency needs more data for a comprehensive evaluation.

In July 2020, EPA officials told us that the agency could not estimate the effect of specific WPS provisions, such as the designated representative provision, because of a lack of information. Nonetheless, in EPA's 2015 economic analysis, the agency found that a decrease in pesticide exposure rates is a plausible outcome of all of the 2015 WPS revisions combined. Furthermore, according to this 2015 analysis, there is sufficient evidence in peer-reviewed literature to suggest that reducing pesticide exposure rates would result in a benefit to public health through reduced chronic illness. EPA officials said that due to the high cost of treating chronic illnesses related to pesticide exposure, having information to more effectively prevent or treat even a small number of pesticide exposure-related illnesses, although not measured, is beneficial.

Most stakeholders (15 of 20) we interviewed provided the same assessment as EPA's 2015 economic analysis: that the use of a designated representative could improve farmworker health and safety by increasing the availability of information when other methods are unavailable to the farmworker. Stakeholders described several situations in which a farmworker could need to use a designated representative. For example, these stakeholders said farmworkers could use a designated representative when:

- the farmworker is no longer physically near the farm;

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<sup>22</sup>U.S. Environmental Protection Agency, Office of Inspector General, *EPA Needs to Evaluate the Impact of the Revised Agricultural Worker Protection Standard On Pesticide Exposure Incidents*, Report No.18-P-0080 (Washington, D.C.: February 15, 2018).

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- language barriers exist between the farmer or grower and farmworker; or
  - medical personnel in other countries are unable to request the information due to language or technology barriers.

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## Instances of Misuse of the Designated Representative Are Unknown, and EPA Guidance Does Not Explain Expectations of Appropriate Use

EPA, state officials, and stakeholders we interviewed did not know of any instances in which a person misused information obtained through the designated representative provision. According to farmers we interviewed, misuse is when pesticide information obtained by a designated representative is used for purposes other than the health of the farmworker.<sup>23</sup> However, EPA guidance does not explain the agency's expectations for appropriate use of pesticide information obtained by a designated representative.

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## Instances of Misuse of the Designated Representative Provision Are Not Currently Known

As of August 2020, none of the EPA officials, state officials in 13 states, and 20 stakeholders we spoke with knew of any instance in which a person serving as a designated representative misused the pesticide information obtained through the provision. EPA officials said that based on their experience, the agency typically hears from farmer groups regarding their perspectives on EPA regulations. As such, these officials indicated that if there were instances of misuse occurring, they anticipated that the groups representing farmers would contact the agency's regional offices or states. In addition, officials from the five states with designated representative provisions prior to the WPS said they did not know of any misuse of information obtained through designated representatives since the states enacted the provisions, in the

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<sup>23</sup>According to some farmer groups, such misuse could include loss of competitive advantage if a designated representative provided information on pesticides applied by one farmer to other farmers. See Appendix II for stakeholder perspectives about potential misuse of the designated representative provision.

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late 1980s through early 2000s.<sup>24</sup> Similarly, OSHA officials we interviewed also said they did not know of any specific misuse of its designated representative provision for workers in non-agricultural settings, a provision that has been in OSHA regulations for over 35 years.<sup>25</sup>

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### EPA Guidance Does Not Explain Expectations for Appropriate Use of the Information Obtained by a Designated Representative

According to the farmers we interviewed, misuse is when pesticide information obtained by a designated representative is used for purposes other than the health and safety of the farmworker requesting the information. According to EPA officials, the agency expects that the pesticide information designated representatives obtain will be used in a way that helps the farmworker requesting the information, such as by providing treatment information in case of exposure to a pesticide. However, based on our analysis, EPA guidance does not explain the agency's expectations for appropriate use of pesticide information by a designated representative, or describe what it means for a designated representative to misuse the information received on behalf of a farmworker.<sup>26</sup> Specifically, EPA's inspection guidance for states and its manual for farmers on how to comply with the provision do not explain appropriate use, such as the importance of designated representatives providing the pesticide information they obtain only to the farmworker requesting the information, or describe misuse. In addition, EPA's website provides examples of why a farmworker may choose to obtain pesticide information by using a designated representative, such as in cases in which language is a barrier; however, it does not explain expectations for appropriate use of the information.

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<sup>24</sup>These five states—California, Florida, Oregon, Texas, and Washington—had state provisions allowing for farmworkers to use designated representatives prior to EPA's 2015 WPS provision.

<sup>25</sup>OSHA officials said the agency does not collect information about the use of the designated representative provision for workers in non-agricultural settings.

<sup>26</sup>U.S. Environmental Protection Agency, *Worker Protection Standard Inspection Manual* (Washington, D.C.: Aug. 15, 2018); U.S. Environmental Protection Agency, *Instruction Manual for the FIFRA Work Plan and Report Template* (Washington, D.C.: Jan. 30, 2017); and U.S. Environmental Protection Agency and Pesticide Educational Resources Collaborative, *How to Comply With the 2015 Revised Worker Protection Standard for Agricultural Pesticides: What Owners and Employers Need to Know* (Washington, D.C.: 2017).

EPA officials acknowledged that the agency has not described what misuse would entail or explained the agency's expectations about appropriate use in guidance or on its website. According to EPA officials, the agency regulates the information that farmers must provide to designated representatives on behalf of farmworkers. EPA's guidance, website, and outreach efforts have focused on this aspect of its oversight role. These officials said that the agency's oversight role does not include regulating how designated representatives use pesticide information. As such, EPA has not focused on providing an explanation of misuse in its guidance, on its website, or in outreach efforts, according to the officials. These officials said that they did not think EPA has the authority to put restrictions on what designated representatives do with the information they receive from farmers. However, even if restricting use were outside EPA's authority, describing misuse in outreach efforts and explaining EPA's expectations about appropriate use could be appropriate given the agency's oversight role, according to agency officials. Some farmer groups we interviewed said that additional explanation about misuse of the designated representative would be helpful in addressing farmer concerns about the provision.

EPA's objectives, as stated in its strategic plan and WPS guidance, include ensuring compliance with the WPS and communicating to the public about the impact of the WPS. These objectives could be challenged if the information provided to designated representatives is misused. In this case, the agency's objectives include ensuring compliance with the designated representative provision, which may be better understood if EPA communicates information to external entities (such as the public)—as called for in federal standards for internal control—on appropriate use and what constitutes misuse.<sup>27</sup> By explaining in EPA's guidance, on its website, or through another mechanism such as outreach the agency's expectations about appropriate use of pesticide information obtained by a designated representative, and describing potential misuse of such information, the agency could ensure designated representatives understand the importance of the information in reducing the consequences of pesticide exposure.

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<sup>27</sup> [GAO-14-704G](#). According to federal standards for internal control, management should externally communicate the necessary quality information to achieve the entity's objectives.

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## Conclusions

In 2015, EPA took important steps to revise and strengthen existing worker protection standards and address risks of pesticides to farmworkers. EPA intended the designated representative provision to provide farmworkers an additional resource to access information about a pesticide's hazards in cases in which farmworkers could not obtain this information on their own or through other methods. However, EPA, in its oversight responsibility over states, does not collect information about the use of the designated representative provision, as called for by federal standards for internal control on the use of quality information to achieve an agency's objectives. By coordinating with states to collect, through its annual cooperative agreement work plans with states or another mechanism, information on the use of the designated representative provision, EPA would be better positioned to determine whether the provision is serving the intended purpose of increasing the availability of pesticide information for farmworkers. In addition, having information on a specific provision of the WPS, such as the designated representative provision, could provide EPA with information should it decide to assess the effectiveness of these provisions in the future.

EPA has not explained its expectations for appropriate use of information by designated representatives in its guidance to states, on its public website, or through other mechanisms, as called for by federal standards for internal control on an agency's external communications to achieve its objectives. EPA also has not described, through these mechanisms, what constitutes misuse of the information. By explaining in EPA's guidance, on its website, or through another mechanism, the agency's expectations about appropriate use of pesticide information obtained by the designated representative, including describing potential misuse of such information, the agency could ensure designated representatives understand the importance of the information in reducing the consequences of pesticide exposure.

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## Recommendations for Executive Action

We are making two recommendations to EPA:

The Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance should coordinate with states to collect information on the use of the designated representative, either through its

annual cooperative agreement work plans with states or another mechanism. The collection of information on use could include consistently compiling the information obtained through inspections across states—specifically, whether farmworkers are using designated representatives and whether farmers are providing the information to the designated representatives within the time frames required by the WPS. (Recommendation 1)

The Director for EPA's Office of Pesticide Programs should, in the agency's guidance, on its website, or through another mechanism, explain EPA's expectations about the appropriate use of the pesticide information obtained by a designated representative, including describing potential misuse of such information. (Recommendation 2)

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## Agency Comments and Our Evaluation

EPA provided written comments on a draft of this report, which are reproduced in app. III. In its written comments, EPA agreed with our recommendations in part.

For our first recommendation, EPA said it would use an existing platform to communicate with co-regulators such as meetings with the Association of American Pesticide Control Officers (AAPCO) and their State FIFRA Issues Research Evaluation Group (SFIREG) or through another vehicle to solicit feedback from state regulators with primary responsibility for conducting WPS inspections. EPA did not agree to use the mechanism of its cooperative agreement work plans because there is no record retention requirement associated with the designated representative provision, so the inspectors may not collect the written requests and responses, among other reasons. Our recommendation allowed EPA to choose a mechanism to obtain information on the use of the designated representative and collecting information through these meetings is reasonable. It will be important that the agency collects a sufficient level of information to determine whether the provision is serving the intended purpose of increasing the availability of pesticide information for farmworkers.

For our second recommendation, EPA agreed to provide updated content and explanation of the intent of the designated representative provision in the WPS on its website. Doing so is an important step to ensuring the designated representatives understand the importance of the information in reducing the consequences of pesticide exposure. EPA disagreed with

the need to describe potential misuse, stating that EPA does not have clear statutory authority to impose restrictions on how farmworkers use the information and believes it would not be appropriate to impose such restrictions when that information is requested through a designated representative, among other reasons. We continue to believe it is important for EPA to describe what it means for a designated representative to misuse the information received on behalf of a farmworker. Our recommendation is not intended to suggest that EPA regulate or enforce misuse but to make it clear that when pesticide information is obtained by a designated representative it is expected to be used for purposes related to the health and safety of the farmworker requesting the information. In doing so, the agency could ensure designated representatives understand the importance of the information in reducing the consequences of pesticide exposure for the worker requesting the information.

We are sending copies of this report to the appropriate congressional committees and the Administrator of the Environmental Protection Agency. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [morriss@gao.gov](mailto:morriss@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to the report are listed in appendix IV.

A handwritten signature in black ink that reads "Steve D. Morris". The signature is written in a cursive, slightly slanted style.

Steve D. Morris  
Director, Natural Resources and Environment

## Appendix I: Objectives, Scope, and Methodology

The Pesticide Registration Improvement Extension Act of 2018 includes a provision for GAO to conduct a study of the use of the designated representative provision in the 2015 Agricultural Worker Protection Standard (WPS).<sup>1</sup> This report examines (1) what is known about the extent of use of the designated representative provision and its effect on the availability of pesticide information, and (2) what is known about any misuse of information obtained through the designated representative provision.

To address both objectives, we reviewed relevant federal laws and regulations. We interviewed officials in EPA's Office of Enforcement and Compliance Assurance, which is responsible for ensuring compliance with EPA regulations, and its Office of Pesticide Programs, which is responsible for reviewing and registering pesticides and providing program guidance to states.<sup>2</sup> In addition, we conducted semi-structured interviews with state officials from 13 selected states to discuss how EPA and states coordinate to conduct oversight of the designated representative provision. These states were Arizona, California, Colorado, Florida, Iowa, Maine, Michigan, New York, North Carolina, Oregon, Texas, Virginia, and Washington. Of these 13 states, we included five that had state provisions predating the 2015 WPS provision that allow farmworkers to use designated representatives to request pesticide information: California, Florida, Oregon, Texas, and Washington. We selected the other eight states based on one or more of the following criteria:

- the state was among the 10 states employing the largest number of farmworkers,<sup>3</sup>

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<sup>1</sup>Pub. L. No. 116-8 § 7(c).

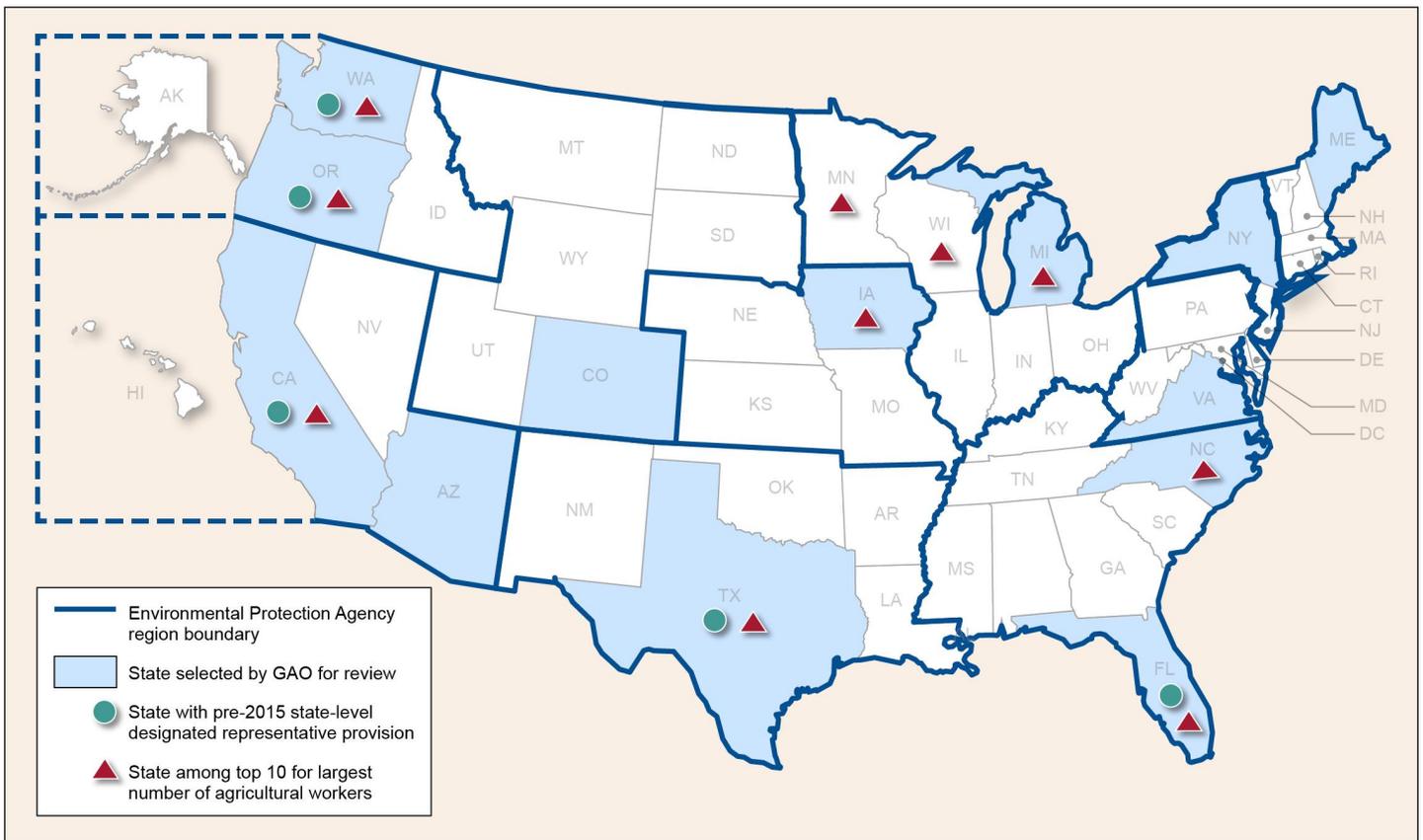
<sup>2</sup>EPA's Office of Pesticide Programs is a sub-office of the Office of Chemical Safety and Pollution Prevention.

<sup>3</sup>Collectively, the states selected accounted for nearly 55 percent of farmworkers hired by all states, according to GAO's analysis of 2017 data (the most recent data available) provided by USDA's National Agricultural Statistical Service.

- the state was among the 10 states with the largest agricultural production, as measured by cash receipts,<sup>4</sup>
- their inclusion was recommended by stakeholders, and
- the location of the state ensured our sample provided geographic diversity across the various agricultural landscapes in the U.S.

Figure 2 illustrates the states included in our review, including states with their own state-level designated representative provision.

**Figure 2: States Selected for GAO’s Review, including States with Highest Number of Agricultural Workers and States with Designated Representative Provisions in State Law**



Sources: Environmental Protection Agency Map Resources Page; GAO analysis of U.S. Department of Agriculture agricultural census data; Map Resources (map). | GAO-21-63

<sup>4</sup>Collectively, the states selected accounted for nearly 30 percent of all agricultural products produced by all states in 2019 (the most recent data available), according to GAO analysis of data from USDA’s Economic Research Service.

We also interviewed officials from three groups representing state or county agricultural officials: The Association of American Pesticide Control Officials, the California Agricultural Commissioners and Sealers Association, and the National Association of State Departments of Agriculture. We also interviewed officials from the Department of Labor's Occupational Safety and Health Administration (OSHA) in headquarters and in area offices in seven of the agency's 10 regions about the use of OSHA's designated representative provision covering workers in other industries.<sup>5</sup>

To obtain stakeholder views about what is known about the use or misuse of the designated representative provision, we conducted interviews with representatives of nine groups representing the interests of farmers, growers, and others in the agricultural industry (farmer groups), and 11 farmworker advocacy groups (farmworker groups). Collectively, we refer to these 20 groups as stakeholders. To describe the position of stakeholders, we sometimes use indefinite quantifiers. For counts of farmers and farmworker groups combined (20 total), three to nine is considered 'some,' 10 to 14 is considered 'many,' 15 to 17 is considered 'most,' and 18 to 19 is 'nearly all.' Table 1 lists the stakeholders we included in our review.

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**Table 1: List of Selected Stakeholders from Groups Representing or Expressing the Interests of Farmers and Farmworkers**

**Farmer Groups**

- AgSafe
- American Farm Bureau Federation
- Arizona Farm Bureau
- CropLife America
- The Growers Company
- North Carolina Growers Association
- Texas International Produce Association
- Washington Friends of Farms & Forests
- Western Growers Association

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<sup>5</sup>We spoke to management officials and compliance officers in area offices in the following regions: Region 2 – Manhattan, New York; Region 3 – Harrisburg, Pennsylvania; Region 4 – Augusta, Georgia; Region 6 – Austin, Texas; Region 7 – Kansas City, Missouri; Region 8 – Bismarck, North Dakota; and Region 10 – Boise, Idaho.

### Farmworker Groups

- California Rural Legal Assistance Foundation
- Campesinos Sin Fronteras
- Community Legal Services
- Farmworker Justice
- Farmworker Association of Florida
- Legal Aid of North Carolina
- Migrant Clinicians Network
- Alianza Nacional de Campesinas (National Farmworker Women's Alliance)
- Natural Resources Defense Council
- National Employment Law Project
- Southern Migrant Legal Services

Source: GAO analysis of interviews and publicly available studies and reports by the U.S. Environmental Protection Agency, the U.S. Department of Agriculture, and other entities. | GAO-21-63

Note: GAO identified and reached out to several other groups representing farmer and farmworker interests, but those groups did not respond or declined to speak with us.

We identified these stakeholders based on our review of publicly available studies, documents, and reports published by EPA, USDA, and relevant stakeholder groups. We also identified additional stakeholders that had taken positions on issues related to the use or misuse of the designated representative and by asking state officials and groups we interviewed to identify additional stakeholders who were knowledgeable about the designated representative provision. Because this was a nonprobability sample of stakeholders, our results are not generalizable to all farmers and farmworkers but provide examples of positions held by groups representing the interests of farmers and farmworkers.

We also obtained EPA's strategic plan,<sup>6</sup> WPS inspection manual, guidance, and other documents to determine key processes EPA is to

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<sup>6</sup>U.S. Environmental Protection Agency, *Working Together: FY 2018-2022 U.S. EPA Strategic Plan* (Washington, D.C.: February 2018) (Updated 2019).

follow in ensuring WPS compliance.<sup>7</sup> Under federal standards for internal control, two principles were significant to this review: the quality information principle, that management should use quality information to achieve the entity's objectives, and the external communication principle, that management should externally communicate the necessary quality information to achieve the entity's objectives. The related attribute that management communicates quality information externally through reporting lines so that external parties can help the entity achieve its objectives and address related risks was also significant.<sup>8</sup>

We conducted this performance audit from October 2019 to December 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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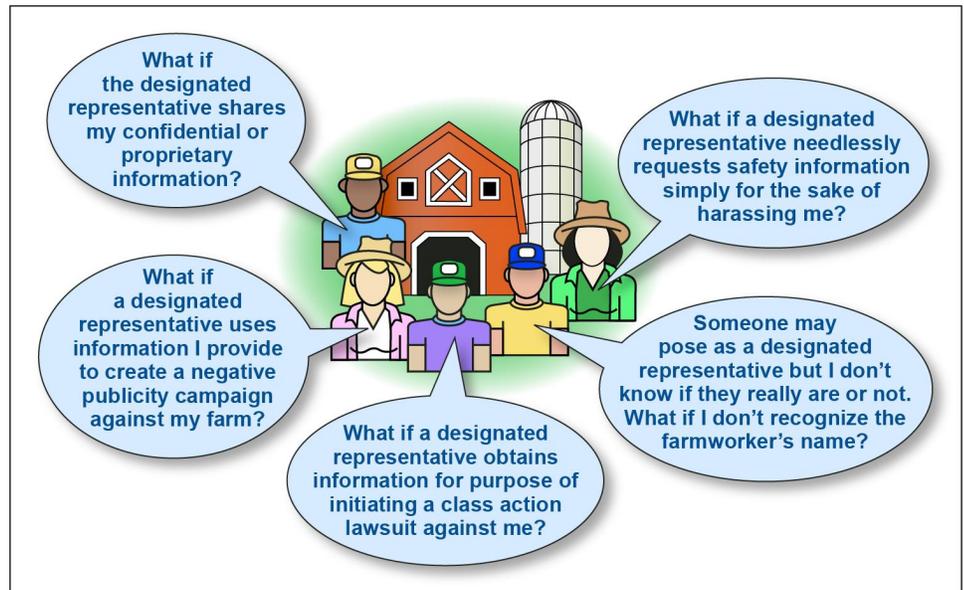
<sup>7</sup>Other documents included, for example, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, *Federal Insecticide, Fungicide and Rodenticide Act Inspection Manual* (Washington, D.C.: Aug. 1, 2019); U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, *Compliance Monitoring Strategy for Federal Insecticide, Fungicide, and Rodenticide Act* (Washington, D.C.: September 2015); and U.S. Environmental Protection Agency, *Instruction Manual for the FIFRA Work Plan and Report Template* (Washington, D.C.: Jan. 30, 2017).

<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

## Appendix II: Stakeholder Perspectives about Misuse of the Designated Representative Provision

Almost all of the stakeholders representing farmer groups (eight of nine) we interviewed identified ways in which information obtained under the designated representative provision of EPA's 2015 Agricultural Worker Protection Standard (WPS) could be misused, although they could not identify an instance of such misuse. In addition, some farmworker groups (four of 11) also identified ways in which the provisions could be misused. EPA took steps in the final rule of the 2015 WPS to prevent misuse, such as requiring that farmworkers identify a designated representative in writing and that the farmworkers provide their names and dates of employment. In addition, EPA limited the record keeping requirement to 2 years, provided farmers with 15 days to comply with the request for information, and allowed for reasonable copying charges for multiple requests for the same farmworker. Representatives of the farmer groups we interviewed shared perspectives about potential misuse that, according to them, these steps did not address. Figure 3 illustrates examples of farmer perspectives about potential misuse of information obtained by a designated representative.

Figure 3: Examples of Farmer Perspectives about Potential Misuse of Pesticide Information Provided to a Designated Representative



Source: GAO analysis of statements from stakeholders representing farmers and the agricultural industry. | GAO-21-63

**Text of Figure 3: Examples of Farmer Perspectives about Potential Misuse of Pesticide Information Provided to a Designated Representative**

- What if the designated representative shares my confidential or proprietary information?
- What if a designated representative uses information I provide to create a negative publicity campaign against my farm?
- What if a designated representative obtains information for purpose of initiating a class action lawsuit against me?
- Someone may pose as a designated representative but I don't know if they really are or not. What if I don't recognize the farmworker's name?
- What if a designated representative needlessly requests safety information simply for the sake of harassing me?

Source: GAO analysis of statements from stakeholders representing farmers and the agricultural industry. | GAO-21-63

Stakeholders representing farmer and farmworker groups and officials from various state agencies that regulate agricultural pesticides provided a range of suggestions about how EPA and states could address

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**Appendix II: Stakeholder Perspectives about  
Misuse of the Designated Representative  
Provision**

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potential misuse of information obtained through the designated representative provision. For example, stakeholders and officials from state agencies that monitor compliance with the WPS suggested the following:

- Prohibiting sharing of information for purposes other than a farmworker's health and safety or worker's compensation claims.
- Including an enforceable financial penalty against designated representatives who share the information they obtain for purposes not intended by the rule.
- Limiting the number of farmworkers that a designated representative can represent to prevent anti-pesticide groups from filing class action lawsuits against a farm.
- Including additional safeguards to verify that the designated representative is 'bona fide' and is collecting information only for the purpose of supporting the farmworker's legitimate purpose.
- Developing a legally binding agreement between the farmer and the farmworker's designated representative to ensure that there is an understanding that the information provided will be used for a medical purpose or for a worker's compensation claim.

# Appendix III: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

December 9, 2020

Mr. Steve D. Morris  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
Washington, D.C. 20548

Dear Mr. Morris:

Thank you for the opportunity to review and comment on GAO's Draft Report entitled "Additional Information Needed to Better Protect Workers from Pesticide Exposure" (GAO-21-63).

The purpose of this letter is to provide EPA's response to the findings, conclusions, and recommendation(s) of the Draft Report. Specific technical comments will be provided under separate transmission by the lead office, the Office of Chemical Safety and Pollution Prevention (OCSPP), on behalf of the Agency.

**GAO Recommendations:**

**Recommendation 1:** The Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance should coordinate with states to collect information on the use of the designated representative, either through its annual cooperative agreement work plans with states or another mechanism. The collection of information on use could include consistently compiling the information obtained through inspections across states—specifically, whether farmworkers are using designated representatives and whether farmers are providing the information to the designated representatives within the timeframes required by the WPS.

**Recommendation 2:** The Director for EPA's Office of Pesticide Programs should, in the agency's guidance, on its website, or through another mechanism, explain EPA's expectations about the appropriate use of the pesticide information obtained by a designated representative, including describing potential misuse of such information.

**EPA Response:**

**Response to Recommendation 1:**

The Office of Enforcement and Compliance Assurance (OECA) understands GAO's interest in the use of the designated representative provision and agrees to the recommendation in part. After considering mechanisms for collecting information, we believe it will be most productive to use an existing platform of communication with co-regulators. Other mechanisms do not appear to be viable nor likely to elicit information useful to the inquiry. OECA and the Office of Pesticide Programs (OPP) meet routinely with the Association of American Pesticide Control Officers (AAPCO) and their State FIFRA Issues Research Evaluation Group (SFIREG); the topic can be placed on the agenda for an upcoming meeting,

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**Appendix III: Comments from the  
Environmental Protection Agency**

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or through another vehicle, to solicit feedback from state regulators with primary responsibility for conducting Agricultural Worker Protection Standard (WPS) inspections.

Under the WPS, an agricultural employer must provide to a worker's or handler's "designated representative", the pesticide application and hazard information that was required to be displayed during the period that worker or handler was employed on the establishment. The information must be provided within 15 days of the request and this request must be made in writing. GAO expressed a concern that designated representatives may mis-use information received through operation of the WPS. However, GAO also stated in its Draft Report that the EPA and state officials as well as the stakeholders they interviewed did not know of any instances where a person misused information obtained through the designated representative provision. For this reason, we believe justification is lacking to support a formal information collection request under the Paperwork Reduction Act for the collection of WPS inspection records from states. Under the Paperwork Reduction Act our organization will be required among other things to evaluate a need for the collection of the information and to create a plan for the efficient and effective management and use of the information to be collected. In order to make decisions based on high-quality data, we want to make sure the data we collect is accurate and helpful. EPA can provide details about how the information we plan to collect will fit with an Agency goal. Those requirements would necessitate a showing of justification for the collection of the information, which is lacking in this instance.

Even if justification existed, collecting WPS inspection records is unlikely to provide the information sought by GAO. Inspection records may contain notations on alleged instances of non-compliance with the designated representative provision by the employer but may not contain any pertinent information when the facility is in compliance. The inspection checklist contained in the EPA WPS Inspection Manual could be useful, but its use is not mandatory nor universal amongst the states with primary responsibility for these inspections. There is no record retention regulatory requirement associated with the designated representative provision, so the inspector may not collect the written requests and responses. Use or misuse of the information by the designated representative is not regulated at all, therefore, there will be no inquiry on this topic during an inspection. Likewise, formal information collection during the grant process is at the macro level since the purpose is to determine if grant commitments have been met and if the state's pesticide program is adequate. Information is not collected on specific regulatory provisions for any inspection type. That level of detail is not required for reporting under an enforcement grant.

For all the foregoing reasons, OECA believes the appropriate and most productive mechanism to collect information on the use of the designated representative provision is to utilize an existing platform for communication with co-regulators and provide any information obtained to OPP.

**Response to Recommendation 2:**

OCSPP/OPP agrees to provide updated content and explanation of the intent of the designated representative provision in the WPS on its website. In the preambles to both the 2014 WPS proposed rule<sup>1</sup> and the 2015 WPS final rule,<sup>2</sup> OPP identified the purpose of the designated representative

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<sup>1</sup> <https://www.federalregister.gov/documents/2014/03/19/2014-04761/pesticides-agricultural-worker-protection-standard-revisions>. Note: the designated representative provision was referred to as "authorized representative" in the 2014 proposal.

<sup>2</sup> <https://www.federalregister.gov/documents/2015/11/02/2015-25970/pesticides-agricultural-worker-protection-standard-revisions>.

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### Appendix III: Comments from the Environmental Protection Agency

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provision, and provided some of following examples of why a worker or handler may choose to request information through a designated representative:

- If there is a language barrier;
- If the employee needs assistance in reading and understanding these documents;
- If there are employee fears of retaliation;
- If the worker or handler has moved and cannot access the information for themselves;
- If a case worker needs information for a workers' compensation review.

Additionally, the 2015 WPS final rule further defined what types of information designated representatives can obtain, and how those requests must be made to owners or employers at 40 CFR 170.311(b)(9), in an effort to address concerns over the potential misuse of information. These requirements state that information requests through a designated representative must be submitted to agricultural employers in writing, imposes limitations on the timeframes and types of information that can be requested through a designated representative, and specifies on how quickly employers must respond to any written requests.

OCSPP has already begun to provide this and other information about the designated representative requirements on OPP's webpage<sup>3</sup> and remains committed to providing clear and improved content and plain language descriptions of the provision to enhance the understanding of the designated representative provision. OCSPP has also provided an email address<sup>4</sup> on the OPP webpage that is dedicated to designated representative inquiries, to further assist with understanding and compliance, and to provide a means for agricultural establishment employers and owners to directly contact the Agency should any concerns arise over a potential misuse of information. Additionally, OPP is in the process of updating the WPS webpages overall to improve the structure and accessibility of information, and is evaluating whether a separate "Designated Representative" page is needed so that this information is not lost among other WPS content. OCSPP anticipates that many of these improvements will occur over the course of the 2021 calendar year.

However, OCSPP generally disagrees with the GAO recommendation on describing potential misuse of information through a designated representative. As indicated in the Draft Report, several states have had pesticide regulations that include requirements for employee representatives to be given access to hazard information for farmworkers, and OCSPP is unaware of any incidents of worker representatives misusing pesticide information obtained pursuant to those states' regulations. Nor is OCSPP aware of any misuse of OSHA's comparable worker right-to-know regulation at 29 CFR 1910.1020, which also allows worker representatives to request information and is broadly applicable in most workplaces. Moreover, OCSPP notes that any action taken to address this recommendation (i.e., through EPA's website or guidance) will not be legally enforceable against persons who do not follow the recommendations provided by the Agency in guidance or on the Agency's website. EPA does not have clear statutory authority under FIFRA sections 12 or 14 to enforce limitations on the use of § 170.311(b)(1) information or to impose penalties on a designated representative. Agricultural employers may decline third-party information requests that do not meet the criteria of § 170.311(b)(9), but there is no other mechanism in FIFRA or 40 CFR part 170 for regulating the behavior of designated representatives.

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<sup>3</sup> <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>.

<sup>4</sup> [OPP\\_designated\\_rep\\_info@epa.gov](mailto:OPP_designated_rep_info@epa.gov); provided at <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>.

**Appendix III: Comments from the  
Environmental Protection Agency**

As noted in the Draft Report, the information that can be obtained by a designated representative is limited in scope. The provision at § 170.311(b)(9) requires an employer to make available to a designated representative the *same* pesticide hazard information and pesticide application information that § 170.311(b) requires the employer to make accessible to workers/handlers contemporaneously with the pesticide use:

- A copy of the safety data sheet (SDS).
- The name, EPA registration number, and active ingredient(s) of the pesticide product.
- The crop or site treated and the location and description of the treated area.
- The date(s) and times the application started and ended.
- The duration of the applicable labeling-specified restricted-entry interval for that application.

In addition to making this information available to workers and handlers at the time the pesticide is used, the WPS requires the employer to make this same information available for two years, upon request of the worker or handler, either directly or through a designated representative. The 2015 WPS final rule included additional limitations on requests through a designated representative by requiring that the designated representative provide written evidence of such designation, including the name of the worker or handler being represented, a description of the specific information being requested, including dates of employment of the employee, the dates for which the records are requested, the type of work conducted by the worker or handler during that period, a statement indicating that the representative is designated by the worker or handler, the specific application and/or hazard information requested, a statement designating the representative to request the information on the worker's or handler's behalf, the date of the designation, and the printed name and contact information for the designated representative. If the information is to be sent to the requester (i.e., the worker or handler), directions for where that information must be sent are to be included.

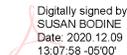
The information that must be provided to a designated representative with a legitimate written request is limited to the same basic application and hazard information that must be provided to workers or handlers when the pesticide is being used, and for two years thereafter when requested in person. None of the application or hazard information that must be displayed and made accessible to workers or handlers per §170.311(b)(1) contains confidential or proprietary information. EPA does not have clear statutory authority under FIFRA to impose restrictions on how a worker or handler could use such information when requested in person (e.g., limiting it to only worker compensation claims and for health and safety purposes), and believes it would not be appropriate to impose such restrictions when that information is requested through a designated representative, even if EPA had the legal authority to do so.

Thank you for the opportunity to review the Draft Report. If you have questions or need further information, please contact Janet L. Weiner, Senior Attorney/Advisor in OCSPP at [weiner.janet@epa.gov](mailto:weiner.janet@epa.gov).

Sincerely,

ALEXANDRA  
DAPOLITO DUNN  Digitally signed by ALEXANDRA  
DAPOLITO DUNN  
Date: 2020.12.10 10:38:52 -05'00'

Alexandra Dapolito Dunn  
Assistant Administrator  
Chemical Safety and Pollution Prevention

SUSAN  
BODINE  Digitally signed by  
SUSAN BODINE  
Date: 2020.12.09  
13:07:58 -05'00'

Susan Parker Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

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**Appendix III: Comments from the  
Environmental Protection Agency**

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cc: EPA GAO Liaison Team  
Tahra Nichols, Assistant Director, Natural Resources and Environment, GAO  
David Bennett, Senior Analyst in Charge, GAO  
All OCSPP DAAs  
All OECA DAAs  
Travis Voyles, OCIR  
Janet Weiner, OCSPP Audit Liaison  
Loan Nguyen, OECA Audit Liaison  
Edward Messina, Director, Office of Pesticide Programs, OCSPP  
David Hindin, Director, Office of Compliance, OECA

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## Text of Appendix III: Comments from the Environmental Protection Agency

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Page 1

December 9, 2020

Mr. Steve D. Morris

Director, Natural Resources and Environment

U.S. Government Accountability Office Washington, D.C. 20548

Dear Mr. Morris:

Thank you for the opportunity to review and comment on GAO's Draft Report entitled "Additional Information Needed to Better Protect Workers from Pesticide Exposure" (GAO-21-63).

The purpose of this letter is to provide EPA's response to the findings, conclusions, and recommendation(s) of the Draft Report. Specific technical comments will be provided under separate transmission by the lead office, the Office of Chemical Safety and Pollution Prevention (OCSP), on behalf of the Agency.

GAO Recommendations:

**Recommendation 1: The Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance should coordinate with states to collect information on the use of the designated representative, either through its annual cooperative agreement work plans with states or another mechanism. The collection of information on use could include consistently compiling the information obtained through inspections across states—specifically, whether farmworkers are using designated representatives and whether farmers are providing the information to the designated representatives within the timeframes required by the WPS.**

**Recommendation 2: The Director for EPA's Office of Pesticide Programs should, in the agency's guidance, on its website, or through another mechanism, explain EPA's expectations about the appropriate use of the**

**pesticide information obtained by a designated representative, including describing potential misuse of such information.**

EPA Response:

**Response to Recommendation 1:**

The Office of Enforcement and Compliance Assurance (OECA) understands GAO's interest in the use of the designated representative provision and agrees to the recommendation in part. After considering mechanisms for collecting information, we believe it will be most productive to use an existing platform of communication with co-regulators. Other mechanisms do not appear to be viable nor likely to elicit information useful to the inquiry. OECA and the Office of Pesticide Programs (OPP) meet routinely with the Association of American Pesticide Control Officers (AAPCO) and their State FIFRA Issues Research Evaluation Group (SFIREG); the topic can be placed on the agenda for an upcoming meeting,

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**Page 2**

or through another vehicle, to solicit feedback from state regulators with primary responsibility for conducting Agricultural Worker Protection Standard (WPS) inspections.

Under the WPS, an agricultural employer must provide to a worker's or handler's "designated representative", the pesticide application and hazard information that was required to be displayed during the period that worker or handler was employed on the establishment. The information must be provided within 15 days of the request and this request must be made in writing. GAO expressed a concern that designated representatives may mis-use information received through operation of the WPS. However, GAO also stated in its Draft Report that the EPA and state officials as well as the stakeholders they interviewed did not know of any instances where a person misused information obtained through the designated representative provision. For this reason, we believe justification is lacking to support a formal information collection request under the Paperwork Reduction Act for the collection of WPS inspection records from states. Under the Paperwork Reduction Act our organization will be required among other things to evaluate a need for the collection of the information and to create a plan for the efficient and effective management and use of the information to be collected. In order to make decisions based on high-quality data, we want to make sure the data we collect is accurate and helpful. EPA can provide details about how the information we plan to collect will fit with an Agency goal. Those requirements would necessitate a showing of justification for the collection of the information, which is lacking in this instance.

Even if justification existed, collecting WPS inspection records is unlikely to provide the information sought by GAO. Inspection records may contain notations on alleged instances of non-compliance with the designated representative provision by the employer but may not contain any pertinent information when the facility is in compliance. The inspection checklist contained in the EPA WPS Inspection Manual could be useful, but its use is not mandatory nor universal amongst the states with primary responsibility for these inspections. There is no record retention regulatory requirement associated with the designated representative provision, so the inspector may not collect the written requests and responses. Use or misuse of the information by the designated representative is not regulated at all, therefore, there will be no inquiry on this topic during an inspection. Likewise, formal information collection during the grant process is at the macro level since the purpose is to determine if grant commitments have been met and if the state's pesticide program is adequate. Information is not collected on specific regulatory provisions for any inspection type. That level of detail is not required for reporting under an enforcement grant.

For all the foregoing reasons, OECA believes the appropriate and most productive mechanism to collect information on the use of the designated representative provision is to utilize an existing platform for communication with co-regulators and provide any information obtained to OPP.

**Response to Recommendation 2:**

OCSPP/OPP agrees to provide updated content and explanation of the intent of the designated representative provision in the WPS on its website. In the preambles to both the 2014 WPS proposed rule<sup>1</sup> and the 2015 WPS final rule,<sup>2</sup> OPP identified the purpose of the designated representative

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provision, and provided some of following examples of why a worker or handler may choose to request information through a designated representative:

- If there is a language barrier;

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<sup>1</sup> <https://www.federalregister.gov/documents/2014/03/19/2014-04761/pesticides-agricultural-worker-protection-standard-revisions>. Note: the designated representative provision was referred to as "authorized representative" in the 2014 proposal. 2

<sup>2</sup> <https://www.federalregister.gov/documents/2015/11/02/2015-25970/pesticides-agricultural-worker-protection-standard-revisions>.

- If the employee needs assistance in reading and understanding these documents;
- If there are employee fears of retaliation;
- If the worker or handler has moved and cannot access the information for themselves;
- If a case worker needs information for a workers' compensation review.

Additionally, the 2015 WPS final rule further defined what types of information designated representatives can obtain, and how those requests must be made to owners or employers at 40 CFR 170.311(b)(9), in an effort to address concerns over the potential misuse of information. These requirements state that information requests through a designated representative must be submitted to agricultural employers in writing, imposes limitations on the timeframes and types of information that can be requested through a designated representative, and specifies on how quickly employers must respond to any written requests.

OCSPP has already begun to provide this and other information about the designated representative requirements on OPP's webpage<sup>3</sup> and remains committed to providing clear and improved content and plain language descriptions of the provision to enhance the understanding of the designated representative provision. OCSPP has also provided an email address<sup>4</sup> on the OPP webpage that is dedicated to designated representative inquiries, to further assist with understanding and compliance, and to provide a means for agricultural establishment employers and owners to directly contact the Agency should any concerns arise over a potential misuse of information. Additionally, OPP is in the process of updating the WPS webpages overall to improve the structure and accessibility of information, and is evaluating whether a separate "Designated Representative" page is needed so that this information is not lost among other WPS content. OCSPP anticipates that many of these improvements will occur over the course of the 2021 calendar year.

However, OCSPP generally disagrees with the GAO recommendation on describing potential misuse of information through a designated representative. As indicated in the Draft Report, several states have had pesticide regulations that include requirements for employee representatives to be given access to hazard information for farmworkers, and OCSPP is unaware of any incidents of worker representatives misusing pesticide information obtained pursuant to those states' regulations. Nor is OCSPP aware of any misuse of OSHA's comparable worker right-to-know regulation

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<sup>3</sup> <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>.

<sup>4</sup> [OPP\\_designated\\_rep\\_info@epa.gov](mailto:OPP_designated_rep_info@epa.gov); provided at <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps>.

at 29 CFR 1910.1020, which also allows worker representatives to request information and is broadly applicable in most workplaces.

Moreover, OCSPP notes that any action taken to address this recommendation (i.e., through EPA's website or guidance) will not be legally enforceable against persons who do not follow the recommendations provided by the Agency in guidance or on the Agency's website. EPA does not have clear statutory authority under FIFRA sections 12 or 14 to enforce limitations on the use of § 170.311(b)(1) information or to impose penalties on a designated representative. Agricultural employers may decline third-party information requests that do not meet the criteria of § 170.311(b)(9), but there is no other mechanism in FIFRA or 40 CFR part 170 for regulating the behavior of designated representatives.

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As noted in the Draft Report, the information that can be obtained by a designated representative is limited in scope. The provision at § 170.311(b)(9) requires an employer to make available to a designated representative the same pesticide hazard information and pesticide application information that § 170.311(b) requires the employer to make accessible to workers/handlers contemporaneously with the pesticide use:

- A copy of the safety data sheet (SDS).
- The name, EPA registration number, and active ingredient(s) of the pesticide product.
- The crop or site treated and the location and description of the treated area.
- The date(s) and times the application started and ended.
- The duration of the applicable labeling-specified restricted-entry interval for that application.

In addition to making this information available to workers and handlers at the time the pesticide is used, the WPS requires the employer to make this same information available for two years, upon request of the worker or handler, either directly or through a designated representative. The 2015 WPS final rule included additional limitations on requests through a designated representative by requiring that the designated representative provide written evidence of such designation, including the name of the worker or handler being represented, a description of the specific information being requested, including dates of employment of the employee, the dates for which the records are requested, the type of work conducted by the worker or handler during that period, a statement indicating that the representative is designated by the worker or handler, the specific application and/or hazard

information requested, a statement designating the representative to request the information on the worker's or handler's behalf, the date of the designation, and the printed name and contact information for the designated representative. If the information is to be sent to the requester (i.e., the worker or handler), directions for where that information must be sent are to be included.

The information that must be provided to a designated representative with a legitimate written request is limited to the same basic application and hazard information that must be provided to workers or handlers when the pesticide is being used, and for two years thereafter when requested in person. None of the application or hazard information that must be displayed and made accessible to workers or handlers per §170.311(b)(1) contains confidential or proprietary information. EPA does not have clear statutory authority under FIFRA to impose restrictions on how a worker or handler could use such information when requested in person (e.g., limiting it to only worker compensation claims and for health and safety purposes), and believes it would not be appropriate to impose such restrictions when that information is requested through a designated representative, even if EPA had the legal authority to do so.

Thank you for the opportunity to review the Draft Report. If you have questions or need further information, please contact Janet L. Weiner, Senior Attorney/Advisor in OCSPP at [weiner.janet@epa.gov](mailto:weiner.janet@epa.gov).

Sincerely,

ALEXANDRA DAPOLITO DUNN

Assistant Administrator

Chemical Safety and Pollution Prevention

SUSAN BODINE

Assistant Administrator

Office of Enforcement and Compliance Assurance

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cc: EPA GAO Liaison Team

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**Appendix III: Comments from the  
Environmental Protection Agency**

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Tahra Nichols, Assistant Director, Natural Resources and Environment, GAO David  
Bennett, Senior Analyst in Charge, GAO

All OCSPP DAAs All OECA DAAs

Travis Voyles, OCIR

Janet Weiner, OCSPP Audit Liaison Loan Nguyen, OECA Audit Liaison

Edward Messina, Director, Office of Pesticide Programs, OCSPP David Hindin,  
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## Appendix IV: GAO Contact and Staff Acknowledgments

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### GAO Contact

Steve D. Morris at (202) 512-3841 or [morriss@gao.gov](mailto:morriss@gao.gov)

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### Staff Acknowledgements

In addition to the contact names above, Tahra Nichols (Assistant Director), David Bennett (Analyst in Charge), Blake Ainsworth, Kevin Bray, Monika Gomez, Gwen Kirby, Danny Royer, Serena Lo, Corinna Nicolaou, and Rajneesh Verma made key contributions to this report.

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