



## ISSUE BRIEF

# The Climate Crisis and Its Impacts on Farmworkers

Prepared for Farmworker Justice's Environmental Justice Symposium; May 17-18<sup>th</sup>, 2022

## Introduction

The climate crisis severely impacts the health and livelihoods of the approximately 2.4 million farmworkers in the U.S.<sup>1</sup> Rising temperatures increase the risk of heat-related illnesses and deaths and also allow pest populations to grow and expand their range, leading to greater use of toxic pesticides by agricultural employers. Changing weather patterns result in more frequent and longer droughts, increasingly severe storms and wildfires, and other natural disasters that threaten farmworkers' food security and access to clean water, in addition to their physical safety.

The socioeconomic challenges farmworkers face cause them to experience the effects of the climate crisis more severely. Approximately 37 percent of the nation's farmworkers do not have work authorization,<sup>2</sup> and over 300,000 workers are on H-2A temporary visas.<sup>3</sup> Twenty-one percent of farmworkers have family incomes below the federal poverty level. Language barriers are common; 67 percent of farmworkers report being limited English proficient (64 percent speak Spanish as their primary language and 3 percent speak indigenous languages).<sup>4</sup>

Further, farmworkers endure hazardous working conditions. Unlike most occupations, agriculture is exempt from many federal labor protections. Moreover, there is insufficient enforcement of agricultural workplace safety regulations; smaller farms with fewer than 10 employees are exempted by law from enforcement of federal Occupational Safety and Health Administration (OSHA) rules.

These factors make it extremely difficult for farmworkers to withstand the health and economic impacts of the climate crisis. Farmworker Justice's Environmental Justice Symposium, May 17 and 18, 2022, brings together experts and professionals across the environmental, health, and farmworker community to share information and recommendations regarding climate change and farmworkers. This issue brief outlines some of the most relevant laws, regulations, and government programs regarding heat stress, pesticides, food security, and water access. The Symposium will highlight the intersection of these issues and climate change in farmworker communities.

## Heat Stress

Among all weather-related workplace hazards, heat is the leading cause of worker deaths. Agricultural workers face a rate of heat-related death 35 times higher than the rate for all other industries in the U.S.<sup>5</sup> Heat exposure may cause heat exhaustion, dizziness, nausea, acute kidney injury and, over the long term, increase the risk for chronic kidney disease.

### *Federal Overview*

The U.S. does not have a federal standard to protect workers from excessive heat. On October 27, 2021, the Occupational Safety and Health Administration (OSHA) announced that it will create a standard to address heat exposure in the workplace.<sup>6</sup> The proposed rule is part of the Biden Administration's inter-agency effort to address extreme heat.<sup>7</sup> In the absence of a federal standard, OSHA's General Duty Clause applies.<sup>8</sup>

On April 8, 2022, OSHA also launched a National Emphasis Program (NEP) to protect outdoor and indoor workers from heat hazards. The NEP enables OSHA to conduct inspections in high-risk industries on any day that heat warnings or advisories are in effect for the local area. It will also initiate compliance assistance in targeted high-risk industries on heat priority days when the heat index is expected to be 80°F or higher.

Legislation has also been introduced in Congress to address heat illness. The "Asunción Valdivia Heat Illness and Fatality Prevention Act of 2021" would require OSHA to issue a federal standard for heat stress protections within 2 years tailored to the specific hazards of the workplace and with meaningful participation of workers.<sup>9</sup> The standard would require that workers have guaranteed paid breaks and access to hydration, and employers would be required to create emergency response procedures, provide training, and implement acclimatization plans for workers, among other provisions.

## State Overview

California was the first state to adopt a standard to protect outdoor workers from heat exposure in 2005.<sup>10</sup> More recently, Washington passed emergency heat rules for farmworkers to strengthen its previously existing standard, adopted in 2008.<sup>11</sup> Washington is working to create permanent protections based on the emergency rules.<sup>12, 13</sup> Oregon similarly adopted temporary emergency rules in 2021 covering employees who work outdoors in extreme heat,<sup>14</sup> and issued a permanent rule in May 2022.<sup>15</sup> On January 31, 2022, Colorado's Department of Labor and Employment issued final regulations on agricultural labor conditions, mandated by the "Farmworkers Bill of Rights."<sup>16, 17</sup> The regulations include several provisions on extreme heat and became effective on May 1, 2022. Minnesota has a heat standard that only applies to indoor work; therefore, most agricultural workers are not covered.<sup>18</sup>

There are legislative and regulatory efforts in other states to protect outdoor workers from heat exposure.

**Maryland.** Lawmakers passed a bill (HB 722) that requires regulators to issue standards for protections from heat exposure for outdoor workers by October 1, 2022. The bill was signed into law in May 2020.<sup>19</sup>

**Nevada.** The state began a rulemaking process in 2020 to adopt a heat stress standard and has issued a proposed rule. The rule must be finalized by the Division of Industrial Relations and approved by the Legislative Commission before it goes into effect.<sup>20</sup>

**Virginia.** The Safety and Health Codes Board voted six to five in December 2021 to end the process started two years earlier to enact heat safety rules for outdoor workers.<sup>21, 22</sup>

**Florida.** Lawmakers introduced a bill in the Senate and House (SB 732 and HB 887) to protect outdoor workers from extreme heat. However, despite a unanimous vote in the Senate Agriculture Committee, no action was taken in the House.<sup>23, 24</sup>

## Food security

Studies show that between 20 and 80 percent of farmworkers will experience food insecurity, without consistent access to healthy or nutritious food, at some point during the year.<sup>25</sup> Droughts and other natural disasters that impact agriculture and the availability of work can have a tremendous impact on farmworkers' food security.

Despite their low wages, many farmworkers are ineligible for federal assistance programs. They also often live in rural communities with limited access to stores, food banks, or food assistance programs. Community-based organizations, food banks, religious organizations, and health centers, among others, provide food assistance to farmworker communities.

## Federal Food Assistance Programs

There are several federal programs that provide food assistance. The [Supplemental Nutrition Assistance Program \(SNAP\)](#) previously known as "food stamps," provides additional financial assistance to families to purchase food.<sup>26</sup> During the COVID-19 pandemic, SNAP benefits were expanded to more people with increased financial assistance.<sup>27</sup> The [Special Supplemental Nutrition Program for Women, Infants, and Children \(WIC\)](#) provides assistance in the form of federal grants to states for health care referrals, supplemental foods, and nutrition education for low-income women who are pregnant, breastfeeding, or postpartum, and to infants and children up to age five who are determined to be at a nutritional risk.<sup>28</sup> Additionally, the [Disaster Supplemental Nutrition Assistance Program \(D-SNAP\)](#) provides emergency food assistance to individuals who qualify for disaster assistance as authorized by the president. D-SNAP grants qualifying individuals one month of benefits on a debit card that can be utilized at most grocery stores.<sup>29</sup>

In addition to SNAP, WIC, and D-SNAP, specific programs provide free or reduced meals for children and free food for seniors. Children from low income, qualified households can receive free or reduced-price school meals through the [National School Lunch Program](#), the [School Breakfast Program](#), and the [Summer Food Service Program](#).<sup>30, 31, 32</sup> Low-income seniors can access food through the [Senior Farmers' Market Nutrition Program](#),<sup>33</sup> as well as the [Commodity Supplemental Food Program](#).<sup>34, 35</sup> Finally, the U.S. Department of Agriculture (USDA) has a [Community Food Projects Competitive Grant Program \(CFPCGP\)](#) that provides grants to low income communities for food assistance.<sup>36</sup>

## Eligibility and Barriers to Food Access for Farmworkers

U.S. citizens, qualified immigrants, and children under 18 years old are eligible for SNAP benefits.<sup>37</sup> Six states – California, Connecticut, Illinois, Maine, Minnesota, and Washington – expanded SNAP eligibility to other immigrant categories. There are no immigration restrictions

for WIC, D-SNAP, or the school lunch and breakfast programs. Only fifteen percent of farmworkers across the country utilize SNAP benefits.<sup>38</sup>

## Pesticides

Farmworkers are often exposed to toxic pesticides in the workplace. Climate change has exacerbated the threats posed by pesticides as more pesticides are applied to combat increasing numbers of pests.<sup>39</sup>

### Regulatory Overview

The federal and state regulations that oversee pesticide registration, labeling, application, spray, and other aspects of pesticides are complicated and diffused between different agencies. The Environmental Protection Agency (EPA) is the primary agency with oversight over pesticides. The [Federal Insecticide, Fungicide and Rodenticide Act \(FIFRA\)](#) authorizes EPA to register pesticides.<sup>40</sup> FIFRA preempts state laws on licensing requirements for pesticides. Under the [Federal Food, Drug and Cosmetic Act \(FFDCA\)](#), the EPA establishes tolerances (maximum legally permissible levels) for pesticide residues in food.<sup>41</sup> The EPA also oversees the [Worker Protection Standard](#) (WPS), which provides protections for farmworkers from pesticide exposure.<sup>42</sup> EPA requires that individuals who apply Restricted Use Pesticides (RUPs), the most toxic class of pesticides available, be certified in accordance with EPA and state and/or tribal regulations.<sup>43</sup>

EPA and the states, normally through the state agriculture department, register or license pesticides for application in the U.S.<sup>44</sup> Prior to registration, EPA conducts a risk assessment to determine the risk to workers from exposure to a pesticide. If the risk to workers is determined to be of concern, risk management measures may be used to manage those risks by reducing exposure. These measures may include mandating the use of personal protective equipment (PPE).<sup>45</sup> However, farmworkers are not always provided the PPE required, or provided training in its use. Furthermore, the use of PPE can increase the risk of heat stress.

The Occupational Safety and Health Act prohibits OSHA from having jurisdiction over workplaces and hazards that are covered by other federal agencies. Since FIFRA addresses pesticide safety and the WPS addresses workplace protections, OSHA does not have standards that specifically address pesticide exposure in the workplace. Still, the [OSHA Field Sanitation Standard](#) requires that employers make potable water and handwashing facilities available in fields, which can help reduce pesticide exposure.<sup>46</sup>

### Enforcement and surveillance

States have the primary responsibility to enforce pesticide use violations if EPA determines there are adequate regulations to enforce the federal statutes regulating pesticides. FIFRA gives states broad latitude in enforcing pesticides, but states cannot create different labeling or packaging requirements from federal law. Tribes have limited enforcement responsibility under FIFRA.<sup>47</sup>

Pesticide exposure surveillance occurs at both the federal and state level. The National Institute for Occupational Safety and Health (NIOSH) utilizes the [Pesticide Surveillance Program](#) to monitor pesticide exposures that occur in the workplace.<sup>48</sup> The Pesticide Surveillance Program is predominantly composed of the [Sentinel Event Notification System for Occupational Risk \(SENSOR\)](#) program, which works to create surveillance capacity within states.<sup>49</sup> However, only thirteen states participate in the SENSOR program.

## Water Access

Access to clean, safe water is not always the norm for farmworkers, many of whom live in substandard housing that in some cases is served by old or inadequate water infrastructure that compromises water quality. Others live in informal housing or labor camps that lack indoor plumbing.<sup>50</sup> Some obtain their water from wells, which in agricultural areas may be contaminated with fertilizers, pesticides and microorganisms from animal waste. Droughts and storms, which are becoming more intense and frequent due to climate change, also affect the availability and quality of water sources. Lack of clean drinking water puts farmworkers' health at risk and forces many farmworker families to spend a portion of their limited income purchasing water.

[Resolution 64/292](#) of the United Nations recognizes “the right to safe and clean drinking water and sanitation as a human right.”<sup>51</sup> The U.S. abstained from voting on this resolution,<sup>52</sup> but in 2012 California became the first state in the nation to adopt a law recognizing access to clean, safe and affordable water as a human right.<sup>53</sup> In 2019, California established the [Safe and Affordable Drinking Water Fund](#), which will provide \$130 million annually in fiscal years 2020 through 2030 to be used for safe drinking water projects, including improving climate change adaptation and resiliency in disadvantaged communities.<sup>54</sup>



## Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the main federal law that regulates drinking water quality in the U.S.<sup>55</sup> Under SDWA, EPA sets water quality standards and oversees the states, localities, and water suppliers to ensure the standards are followed. The SDWA does not regulate domestic wells, but some states have adopted their own regulations. The EPA maintains a directory of state private drinking water well programs.<sup>56</sup>

EPA's [Ground Water Rule](#) (GWR) applies to water systems that use ground water sources. It seeks to reduce the risk of disease caused by fecal contamination of drinking water. It sets requirements for compliance monitoring, source water monitoring, and water treatment.<sup>57</sup>

## Infrastructure funding and other assistance

The [Drinking Water State Revolving Fund](#) (DWSRF) provides financing to public water systems – usually in the form of low- or no-interest loans – to finance infrastructure projects such as improving water treatment systems or fixing water distribution systems.<sup>58</sup> Congress appropriates funds for the DWSRF, which EPA then distributes to each state's fund as capitalization grants. Capitalization grants are awarded based on the results of the most recent [Drinking Water Infrastructure Needs Assessment](#).<sup>59</sup> States provide a 20 percent match.

The U.S. Department of Housing and Urban Development (HUD) administers [Community Development Block Grants](#) (CDBGs) that can be used to build or improve public water systems.<sup>60</sup> Improvements that can be financed through CDBGs include the development of new water sources, improvement of water treatment systems and replacement of old pipes. USDA-Rural Development administers [Rural Utilities Service Water and Environmental Programs](#) (WEP) funding for construction of water and waste facilities in small rural communities with populations of fewer than 10,000 people.<sup>61</sup> It also provides funding for private wells through the [Rural Decentralized Water Systems Grant Program](#), available to rural areas, tribal lands in rural areas, and colonias.<sup>62</sup> These grants help nonprofits provide low-interest loans to low-income homeowners to construct, refurbish or service water wells.

Finally, the Infrastructure, Investment and Jobs Act ([Bipartisan Infrastructure Bill](#)) authorized a total of \$11.7 billion for the Drinking Water State Revolving Fund (DWSRF) capitalization grants, \$510 million for the As-

sistance for Small and Disadvantaged Communities Drinking Water Grant Program and \$500 million for lead service line replacement for fiscal years 2022-2026.<sup>63</sup>

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More information about heat, food security, pesticides, and water access in farmworker communities can be found on FJ's website. A final report with strategies and recommendations from the Environmental Justice Symposium will be published in summer 2022.

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